

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	3:05-CR-00413-KI
	)	
	)	March 6, 2012
MEHRDAD YASREBI AND CHILD	)	
FOUNDATION,	)	Portland, Oregon
	)	
Defendants.	)	
_____	)	

SENTENCING

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE GARR M. KING  
UNITED STATES DISTRICT COURT JUDGE

## Proceedings - 3/6/12

## APPEARANCES

FOR THE PLAINTIFF: Charles F. Gorder, Jr.  
David L. Atkinson  
UNITED STATES ATTORNEY'S OFFICE  
1000 SW Third Avenue  
Room 600  
Portland, OR 97204

FOR DEFENDANT YASREBI: David H. Angeli  
Kevin M. Sali  
ANGELI LAW GROUP LLC  
121 SW Morrison Street  
Suite 400  
Portland, OR 97205

FOR DEFENDANT CHILD  
FOUNDATION: Robert R. Calo  
Erin M. Wilson  
LANE POWELL, PC  
601 SW Second Avenue  
Suite 2100  
Portland, OR 97204

COURT REPORTER: Jill L. Erwin, CSR, RPR, CRR  
United States District Courthouse  
1000 SW Third Avenue, Room 301  
Portland, OR 97204  
(503)326-8191

\* \* \*

## Proceedings - 3/6/12

1 TRANSCRIPT OF PROCEEDINGS

2 (In open court:)

3 THE CLERK: All rise. The United States  
4 District Court for the District of Oregon is now in  
5 session. The Honorable Garr M. King presiding.

6 THE COURT: Good morning. All right. First,  
7 I'm going to take a look at the list of attorneys, so I  
8 make sure I know who's who. I'll have you introduce  
9 yourselves. And let's go a little bit slow so I can put  
10 a name to the faces here.

11 Mr. Gorder, for the Government?

12 MR. GORDER: Yes. Yes, Your Honor,  
13 Charles Gorder for the United States, with David Atkinson  
14 from our office. Just so you know, this is  
15 Kimberly Price, with the FBI, and Rena Rallis, who's our  
16 computer guru in the attorney's office.

17 THE COURT: All right. Now, I will ask that  
18 you bring the microphones close to you. I have real-time  
19 here, and I can follow that, but I want to make sure that  
20 I hear you.

21 MR. ANGELI: Good morning, Your Honor.  
22 David Angeli, representing Mehrdad Yasrebi, who's here at  
23 counsel table with me, along with my paralegal,  
24 Cheryl Oakley, and we're also joined by Kevin Sali, who's  
25 another attorney in my office.

Proceedings - 3/6/12

1 THE COURT: Thank you, Mr. Angeli. I want to  
2 make sure I pronounce the defendant's name correctly.

3 MR. ANGELI: It's Mehrdad Yasrebi, Your Honor.

4 THE COURT: Yasrebi. All right. Thank you.

5 All right, Mr. Yasrebi.

6 MR. CALO: Good morning, Your Honor.

7 Robert Calo.

8 THE COURT: Mr. Calo.

9 MR. CALO: Good to see you again. On behalf of  
10 the Foundation.

11 MS. WILSON: Good morning, Your Honor.

12 Erin Wilson on behalf of the Foundation.

13 THE COURT: All right. I have a lot of papers  
14 up here, so give me a minute to kind of get them laid  
15 out.

16 All right. This is the time set for sentencing.  
17 I've read a number of submissions, memos from the  
18 attorneys, and the presentence reports. I take it that  
19 I've been given everything that you want me to read at  
20 this point in time, so we'll proceed at this point with  
21 argument and testimony, if there is going to be  
22 testimony.

23 Now, just so that I'm confident that I understand  
24 the respective positions of the parties, first, with  
25 regard to the advisory guideline calculations, the

Proceedings - 3/6/12

1 Government and probation has calculated an offense level  
2 of 26. The defendant argues that the appropriate offense  
3 level is 12. Using 26, the range is 46 to 57 months;  
4 using 12, the defendant's proposed range is six to 12  
5 months.

6 As to Yasrebi, Yasrebi -- I'm sorry -- the  
7 Government and probation recommends a sentence of 30  
8 months in prison and a fine of \$50,000.

9 As to Child Foundation, probation recommends four  
10 years probation and a fine of \$60,000. The Government  
11 recommends a fine of 125,000 and four years probation.

12 As to Yasrebi, the defense recommends a probationary  
13 sentence with a fine of \$10,000; as to Child, it  
14 recommends a fine of \$10,000 and no probation.

15 Now, the parties have submitted over 200 pages of  
16 briefing and many exhibits. These all set forth their  
17 objections, their positions, their arguments to the  
18 Court. I assure you I have read and I considered all of  
19 the submissions and objections. I will not be making  
20 specific rulings on each dispute, but I will be making  
21 rulings, obviously, where findings are required or  
22 necessary.

23 Now, I'm going to consider all of the arguments that  
24 have been made in the submissions in arriving at the  
25 findings that I feel are necessary and in determining a

1 just and reasonable sentence.

2 Now, I'm going to give you an opportunity to both  
3 present testimony and argue, but I have come to a number  
4 of conclusions, and I'm going to tell you at this point  
5 what conclusions I have made. I think that might reduce  
6 the argument somewhat. I don't want to cut you off  
7 completely, because there may be something you want to  
8 bring to the Court's attention that is not in your  
9 submissions or that you feel is worthy of sufficient --  
10 it's worthy of further argument.

11 Just a second here. I'm going to find -- well, with  
12 regard to the advisory guidelines, there is a dispute as  
13 to the offense level which should be used, which makes a  
14 substantial difference on the advisory guidelines range.  
15 I've talked -- I looked at this, my law clerk has done a  
16 lot of work on it, I've spent time with probation, and  
17 I've come to the conclusion that the base offense level  
18 which should be used in this case is 26, under guideline  
19 2M5.1(a)(1), which covers evasion of export -- export  
20 controls.

21 I'm not going to go into all the pros and cons of  
22 the arguments, but I will say that I think the advisory  
23 guidelines are not much help in this case because it is  
24 so confusing, for one thing, and there are a number of  
25 other factors, too.

## Proceedings - 3/6/12

1 But I think, on balance, that is the appropriate --  
2 technically, the appropriate guideline to use in this  
3 case.

4 And I'm going to go into it a little more in my  
5 findings before sentencing, but I just want to tell you  
6 that that is the guideline that I'm going to go with.  
7 But I will be looking very heavily at 3553 factors to  
8 arrive at an appropriate sentence in this case.

9 Now, again, with respect to the issue that is in the  
10 case as to whether or not the Iran embargo prohibits the  
11 transfer of cash, there is dispute over that, and there  
12 was dispute in the past. There's still, apparently, some  
13 dispute.

14 In looking at this, though, I've come to the  
15 conclusion -- and, again, I will give you more reasons  
16 when we get to that point -- that the embargo in this  
17 case -- and I'm going to be specific as to this case --  
18 taking into consideration the plea that Mr. Yasrebi  
19 entered, that the -- that the embargo prohibits the  
20 transfer of cash.

21 As I say, there are a lot of factors that I'll  
22 discuss at that time, and I'll discuss them under 3553,  
23 as well as the legal issues.

24 Again, there are serious legal issues on that  
25 subject.

Proceedings - 3/6/12

1 But those are the rulings that I intend to make at  
2 this time. If you feel there's something you want to put  
3 on the record beyond your objections to that, you can do  
4 so.

5 Okay.

6 MR. CALO: Excuse me, Your Honor?

7 THE COURT: I believe that the sentence -- that  
8 a sentence below the advisory guideline range for both  
9 Defendant Yasrebi and Defendant Child Foundation is  
10 appropriate under all the circumstances of this case.

11 I do note that the recommendation of the Government  
12 and probation are both below the advisory guideline  
13 range, but they do differ substantially from defendants'  
14 position.

15 So at this point I'm giving you -- not an idea, but  
16 I'm telling you how I'm going to rule on those two  
17 subjects, but we're a long way from arriving at the  
18 sentence in this case because of all the 3553 factors,  
19 which the Court has considered and will discuss later.

20 Now, the Government -- does the Government have any  
21 testimony you wish to put on?

22 MR. GORDER: No, Your Honor. We're going to  
23 rely on the exhibits that have been proffered before you.  
24 We have a few others that we're going to reference today  
25 that we'll be talking about.



## Proceedings - 3/6/12

1 THE COURT: Are you ready to make your  
2 argument, then?

3 MR. GORDER: Yes, we are.

4 THE COURT: Okay. Let me ask the defense,  
5 would you prefer to put on testimony before argument, or  
6 do you wish to hear the Government's argument before you  
7 put on your testimony and argue, to the extent you're  
8 going to argue?

9 MR. ANGELI: Your Honor, we're not going to be  
10 putting on testimony. Dr. Yasrebi does want to allocute  
11 at the end of the proceedings, but there won't be any  
12 testimony. We'll be proceeding directly to argument,  
13 too.

14 I've heard what the Court has said on those issues.  
15 It is my intent, Your Honor, because I do believe it's an  
16 absolutely critical issue for what you have to decide  
17 today, to address this question of legality in a little  
18 bit more detail. I hope -- I understand where the Court  
19 is inclined to go.

20 THE COURT: I'm prepared to listen to it. If  
21 you feel it's important to address, I'll listen to it.

22 MR. ANGELI: If Your Honor would like, I can  
23 spend some time discussing that right now before we get  
24 into talking about what the evidence is in the case.

25 THE COURT: Well, I usually let the Government

## Proceedings - 3/6/12

1 argue first, unless the parties -- I don't care.

2 What do you think, Mr. Gorder?

3 MR. GORDER: Well, Your Honor, I was going to  
4 start off talking about the issue involving the embargo.  
5 In light of the Court's preliminary ruling, I'll probably  
6 reserve and wait until Mr. Angeli talks about it.

7 THE COURT: Mr. Angeli, you can argue if you  
8 wish.

9 MR. ANGELI: Your Honor, we do have a  
10 PowerPoint presentation. There are two, and I'll direct  
11 Your Honor's attention as appropriate to that.

12 THE COURT: Okay. I have it here.

13 MR. ANGELI: Judge, I think this issue of the  
14 legality in the underlying transfers is important for a  
15 number of reasons in this case. Obviously, as Your Honor  
16 has pointed out, it goes to the guidelines issue, which,  
17 of course, is the core part of what Your Honor is going  
18 to be deciding today, albeit not a dispositive part.

19 In our view, 2C1.1 applies here, and I think the  
20 Government has come around to the point where they've  
21 even agreed 2C1.1 is the starting point.

22 If you stay in 2C1.1, then you've got a guideline  
23 range of six to 12 months. I think it's important here,  
24 Your Honor, to recognize Dr. Yasrebi did not plead guilty  
25 to a violation of the OFAC regulations. He's pled guilty

1 to a conspiracy under 18 U.S.C. § 371, which is what is  
2 covered by § 2C1.1.

3 And, critically, the cross-references apply. And  
4 this is really the issue today, at least in this part of  
5 the presentation. The cross-references that the  
6 Government applies to get to the higher guideline range  
7 apply only if there is some other crime, some other  
8 criminal activity that was either facilitated or covered  
9 up by the conspiracy. So that question of whether  
10 there's an underlying crime is critical to the issue of  
11 the guidelines.

12 It's also important, Your Honor, because, as you  
13 know, Dr. Yasrebi is a permanent resident in the United  
14 States, but he's not a citizen. And what happens here  
15 today in this courtroom may very well have important  
16 immigration consequences for him. And if Your Honor were  
17 to make a finding that he violated a regulation that  
18 implicates national security, that could potentially have  
19 devastating consequences to him from an immigration  
20 perspective, as well.

21 And, finally, Your Honor, I think this issue of the  
22 legality of the underlying transactions just affects the  
23 overall feel of this case.

24 In our view, Dr. Yasrebi is a man who tried his best  
25 for a period of ten years to guide this charity in a way

1 that he thought was legal. He wasn't perfect, but he did  
2 his best.

3 In late 2006 and early 2007 there's an aberrational  
4 period of conduct, and that's what he pled guilty to.

5 The Government's view is that there was a  
6 decade-long period of illegality here that was capped off  
7 in late 2006 and early 2007. I think, Your Honor, that  
8 that question of the legality of the underlying transfers  
9 just changes the feel of the case. Those are two very  
10 different world views about what happened here.

11 So I think digging into this question is important.

12 There is, Your Honor, a very specific way and  
13 logical way to go about answering this question of  
14 legality. And as the slide shows here, Judge, the very  
15 first question that somebody needs to ask: The ITRs do  
16 not prohibit all transactions between the United States  
17 and Iran.

18 So the first question you have to ask, Judge, is,  
19 "Are these transactions covered by the regulations at  
20 all? Are they presumptively prohibited?"

21 If the answer to that question is no, that the  
22 regulations don't cover the transactions, that's the end  
23 of the analysis. We don't have to talk about whether an  
24 exemption applies or whether OFAC issued a license. You  
25 don't even have to get there. The transaction is not

1 presumptively prohibited.

2 If it is presumptively prohibited, the next question  
3 is, "Does an exemption, nevertheless, apply?"

4 If this transaction is part of a larger class of  
5 transactions that are prohibited, does it, nevertheless,  
6 fall within a specific exception provided by the  
7 regulations? And if the answer to that question is yes,  
8 again, the transaction is legal.

9 Finally, if the transaction is presumptively  
10 prohibited and if it doesn't fall under an exemption,  
11 then it's illegal, unless OFAC has issued a license.

12 Now, in its papers, Your Honor, the Government spent  
13 all of its time on questions 2 and 3. Mostly they talk  
14 about question 3. They say over and over again,  
15 "Child Foundation transferred money without a license,"  
16 and we obviously concede that.

17 They did. And they spent a little bit of time on  
18 question 2, and they point to the fact -- and they're  
19 right -- that the regulations contain a specific  
20 exemption saying that you can donate articles intended to  
21 relieve human suffering. They say funds are not  
22 articles, and, therefore, that exemption doesn't apply.

23 I think that point is at least arguable.

24 But where we spent all of our time and where I think  
25 the real question is in this case is up on question one,

1 and they don't answer that question at all.

2 And that question is, "Are charitable transactions,  
3 charitable remissions, presumptively prohibited by the  
4 ITRs at all?"

5 Because if the answer to that question is no, we  
6 don't have to talk about exemptions, and we don't have to  
7 talk about licenses.

8 And the answer is charitable transactions are not  
9 presumptively prohibited by the ITRs. How do we get to  
10 that answer? Your Honor knows we relied on the *Banki*  
11 case, which the Second Circuit decided earlier this year.

12 And *Banki* involved millions of dollars worth of  
13 transactions in the United States and Iran relating to  
14 Mr. Banki's family. In that case the Second Circuit was  
15 presented with the question that we have here today:  
16 Were those transfers presumptively covered by the ITRs?

17 As Your Honor will see on the screen, in responding  
18 to that question, the Second Circuit told us a number of  
19 things. They started out by saying: While there are  
20 provisions prohibiting the remitting of funds for certain  
21 purposes, there is no general bar to the remission of  
22 funds.

23 And let's stop right there for a moment.

24 What the Second Circuit is recognizing, Your Honor,  
25 is that the regulations prohibit transactions involving

1 the exportation or supply of three things: Goods,  
2 technology, and services.

3 Funds are not among the things that are specifically  
4 prohibited by the regs.

5 As the Second Circuit recognized in *Banki*, when the  
6 Government wants to do an overall bar on the transfer of  
7 funds, it knows how to do that.

8 The 1979 embargo says you can't transfer funds,  
9 goods, technology, or services. But in the current  
10 regime there is no general bar to the remission of funds,  
11 and that's what the *Banki* court was recognizing.

12 Even more importantly, Judge, is the last part about  
13 what the Second Circuit said there. 560.516(a)(2)  
14 expressly provides that noncommercial remissions are not  
15 prohibited.

16 Now, of course, to some extent, that begs the  
17 question in this case: What is a noncommercial  
18 remittance?

19 And in *Banki* the Court reversed Mr. Banki's  
20 conviction, finding that the millions of dollars worth of  
21 transactions in that case were not commercial remissions.

22 So the question that we have to answer here today,  
23 Your Honor, is "What other types of remittances fall  
24 within that general category of noncommercial  
25 remittances," and, specifically, "Do charitable donations

1 fall within that overall category?" And the answer is  
2 yes. And how do we get there?

3 In our letter to Mr. Eisenbrandt, the presentence  
4 report writer, we cited several cases that help us get to  
5 the answer to that question.

6 But before we go there, look at the regulation  
7 itself, Your Honor. We've quoted it here. The  
8 regulation says that they do not prohibit noncommercial  
9 remittances to or from Iran; for example, a family  
10 remittance not related to a family-owned enterprise.

11 So the regulation tells us two things: One, it  
12 tells us there is this large class of transactions called  
13 noncommercial remittances; and, two, that a subset of  
14 that larger class are family remittances. And I think  
15 the question for the Court is, "Do charitable remittances  
16 also fall within that larger circle?" And the answer is  
17 yes.

18 And, to my knowledge, this issue has not  
19 specifically been T'd up in the context with the ITRs  
20 with the Court. But in the other contexts the Courts  
21 have answered this question in the affirmative. And,  
22 specifically, in the *Drake* case that we cite -- it was a  
23 Sherman Act case -- relating to the donation of public  
24 service advertisement time. And the quote, Your Honor,  
25 from the *Drake* case is, Provision of free air time for



1 public service announcements is not commercial activity  
2 and, thus, not the sort of activity which the Sherman Act  
3 was intended to address. It is charitable activity. And  
4 the Drake court calls that, quote, the polar opposite of  
5 commerce, and, hence, not within the scope of the Sherman  
6 Act.

7 So the *Drake* court says not only is charitable  
8 activity not commercial activity, it's the polar opposite  
9 of it.

10 Similarly, Judge, in the Second Circuit case that we  
11 cited, arising out of 9/11, some plaintiffs sued Saudi  
12 Arabia. And the question the Court was faced with in  
13 that case was whether the Foreign Sovereign Immunities  
14 Act applied. And the law says you don't get immunity, if  
15 you're a foreign country, if you were engaged in  
16 commercial activity in the United States.

17 And, Your Honor, similarly, the Court said donations  
18 to charities from Saudi Arabia, even though the donors  
19 knew that that money was ultimately going to be used to  
20 pay for goods and services, is not commercial activity,  
21 because the Court said giving away money is not a  
22 commercial activity.

23 Really, Judge, the thread that runs through both of  
24 those cases, the distinguishing factor about what makes  
25 something a commercial transaction is a mutual exchange

1 of consideration. That's what the courts are saying.

2 I give you something. You give me something in  
3 return. If I give you something and get nothing in  
4 return, it is not a commercial transaction.

5 And, Judge, that -- that distinction is consistent  
6 with the way the term is used in other contexts.

7 For example, the Uniform Commercial Code itself,  
8 which we've put up on the screen, recognizes that a  
9 commercial transaction is a single subject. Every phase  
10 of commerce involved is part of one transaction; namely  
11 the sale of and payment for goods.

12 So, again, it's a two-way transaction; not a  
13 donation.

14 We've cited other authority, Your Honor. The  
15 Encyclopedia Britannica tells us all commercial  
16 transactions have one thing in common, and that is this  
17 mutual exchange. We cited Black's Law Dictionary on and  
18 on. The core point, Judge, is that a commercial  
19 transaction, which are the only type -- commercial  
20 remittances of money are the only type covered by the  
21 regulations have to involve a mutual exchange of  
22 consideration. And that is not what happened here.

23 So we think, Your Honor, that charitable remittances  
24 fall neatly within that larger class. And, critically,  
25 Your Honor, you don't even have to make that finding,

1 because this is a criminal case. And if there's even any  
2 ambiguity on that question, that ambiguity has to be  
3 resolved in Dr. Yasrebi's favor.

4 The rule of lenity, which the Supreme Court has told  
5 us over and over again applies in criminal cases,  
6 requires ambiguous criminal laws to be resolved in the  
7 defendant's favor.

8 And in light of all this, Judge, the way the courts  
9 have defined what commercial activity is, the way the  
10 Uniform Commercial Code defines what it is, the  
11 Government cannot stand up here with a straight face and  
12 say the statutes and the rules unambiguously prohibit the  
13 transfer of charitable donations. They don't.

14 And I think that that is particularly true in light  
15 of this letter that's up on the screen now, Judge.

16 You know, we've spent a lot of time talking about  
17 this letter in our papers. And this is the letter that  
18 the then director of OFAC sent to the Kahrizak Foundation  
19 in 1997. And the Kahrizak Foundation was asking OFAC  
20 about the very same thing that's at issue here: Do the  
21 regulations apply to the transfer of funds to Iran?

22 The Government complains about our use of this  
23 letter, and they say, "That's a different charity.  
24 That's not the Child Foundation, and, therefore, it's  
25 irrelevant."

Proceedings - 3/6/12

1 But, Judge, to our knowledge, this letter is the  
2 only time, outside of these proceedings, that this  
3 specific issue of whether charitable remissions fall  
4 within the scope of the ITRs was presented for a decision  
5 by any forum. And the Government has never explained  
6 what the legally relevant distinctions are between the  
7 Child Foundation situation and the situation this charity  
8 was facing in 1997; a U.S. charity sending money to its  
9 Iranian affiliate for charitable purposes.

10 And I challenge them, if there is a legally relevant  
11 distinction between the two situations, to tell the Court  
12 today what that distinction is.

13 We've asked. We've sent multiple FOIA requests to  
14 OFAC. We've sent multiple discovery letters to the  
15 Government, seeking documents that might tell us whether  
16 there is a distinction between the two situations,  
17 seeking documents that might tell us whether any other  
18 charity has ever asked OFAC whether the regulations  
19 prohibited charitable transactions and been told they do  
20 prohibit it, and we haven't gotten anything. So, to our  
21 knowledge, no such document exists.

22 The Government, Judge, also says -- they've referred  
23 to this letter as a license. And they've said, well,  
24 this is like the Government giving a driver's license to  
25 one party and then another party saying, "I get to drive,

1 too."

2 This is not a license. And, Your Honor, we've blown  
3 up the relevant parts of this letter. And in the letter  
4 OFAC recognizes that what Kahrizak Foundation was asking  
5 was that first layer of our analysis. Not for a license.  
6 They were asking, "Do the regulations apply at all to our  
7 transfer of funds to our sister charity in Iran?"

8 And the director of OFAC, in the next part that  
9 we've called out, echoes the Court's language in *Banki*  
10 and says, "The regulations do not prohibit transfers that  
11 are noncommercial in nature." And goes on to say, "Yes,  
12 the regulations permit you to send money for charitable  
13 purposes to Iran."

14 In light of all that, Judge -- in light of the *Drake*  
15 opinion, the Second Circuit's case in the 9/11 case, the  
16 UCC definition, all of the common use definitions, and  
17 the ruling of OFAC itself in this matter, the agency  
18 responsible for interpreting these regulations, I can't  
19 imagine how we can conclude here today that the  
20 regulations unambiguously prohibit the transfer of  
21 charitable funds.

22 And if there's any ambiguity in that, those  
23 issues -- and they are important issues, both from a  
24 guidelines perspective and an immigration perspective,  
25 for Dr. Yasrebi -- I can't imagine that we can conclude

1 there's no ambiguity there. And that ambiguity has to be  
2 resolved in his favor, Your Honor.

3 So, for that reason, I hope the Court will  
4 reconsider its conclusion about the legality of these  
5 underlying transactions, or, at the very least, recognize  
6 that the rule of lenity compels that those issues be  
7 resolved in Dr. Yasrebi's favor.

8 THE COURT: Let me ask you about the plea, the  
9 plea petition that was made to the Court regarding the  
10 charges.

11 The statement made by Defendant Yasrebi is as  
12 follows: From the middle of 2006 to early 2007, as the  
13 president of the Child Foundation, I was aware that Child  
14 Foundation funds were being used to facilitate cash  
15 transfers to Iran for charitable purposes; but,  
16 nevertheless, in violation of an embargo ordered by  
17 President Clinton.

18 MR. ANGELI: Yes.

19 THE COURT: Now, isn't that an admission on his  
20 part of the violation for the purpose of this case?

21 MR. ANGELI: Absolutely not, Your Honor.

22 What Dr. Yasrebi pled to is a conspiracy to impede  
23 the lawful functions of OFAC and the IRS. And,  
24 specifically, the conduct that he engaged in at that  
25 period of time -- and we admit to this -- was creating

Proceedings - 3/6/12

1 documents to cover up certain transactions that had  
2 happened. And the reason he did that, and that's what  
3 this factual assertion is talking about, is, "Why did I  
4 do that?"

5 And the answer is that people brought to his  
6 attention in late 2006 -- there was a guy named  
7 David Kirkwood at the Child Foundation, and we submitted  
8 a memorandum that Mr. Kirkwood wrote. He made  
9 Dr. Yasrebi aware of that. And it was that awareness  
10 that caused him to engage in actual conduct underlying  
11 the plea. That doesn't mean Dr. Yasrebi agrees today  
12 that, in fact, the conduct was illegal. That's what was  
13 brought to his attention at the time, and it's what,  
14 unfortunately, motivated him to engage in the conduct for  
15 which he pled guilty.

16 But I don't think there's anything there,  
17 Your Honor, that's any admission of the illegality of the  
18 underlying transactions. And perhaps more importantly,  
19 the transactions are either legal or they're not, Judge.  
20 And I think for the reasons we just talked about, we've  
21 got the better of the argument, and, in a criminal case,  
22 that's all that matters.

23 To my knowledge, there is no authority, zero, out  
24 there for the proposition that an entity sending  
25 charitable remissions to Iran has violated the law. I'm

Proceedings - 3/6/12

1 not aware of any entity who's ever had even a civil  
2 enforcement action brought against it for that, much less  
3 a criminal prosecution.

4 This is a unique case. This theory that the  
5 Government is presenting in this case has never been  
6 presented before, and it's contrary to the guidance that  
7 OFAC itself was issuing at the time.

8 And, you know, when I first looked at this case,  
9 Your Honor -- and I said this to the Government -- "How  
10 is it that you can give one charity permission to do this  
11 and prosecute, criminally, another entity and its  
12 director?" I mean, there's a fundamental unfairness  
13 there.

14 And to stand here in a criminal case and say  
15 unambiguously the statute prohibits that conduct, it's  
16 unfair, Judge. There's nothing out there to support that  
17 notion, civilly, much less criminally.

18 THE COURT: All right. I'll hear from  
19 Mr. Gorder.

20 MR. GORDER: Your Honor, with your permission,  
21 I'd like to stand over by the podium, too.

22 THE COURT: Okay.

23 MR. GORDER: Your Honor, today I'm going to  
24 address the issue of the scope of the embargo and also  
25 the defendant's knowledge about the violations of the



1 embargo that were going on at the Child Foundation under  
2 his direction. And I also want to address briefly the  
3 national security implications of the case. Mr. Atkinson  
4 is going to talk further on the question of the continued  
5 illegality that was going on over a long period of time,  
6 which I think impacts on what the appropriate sentence --

7 THE COURT: Well, be sure to respond to the  
8 arguments that were just made.

9 MR. GORDER: I will.

10 THE COURT: Particularly, the questions that  
11 Mr. Angeli asked of you generally at this point.

12 MR. GORDER: Your Honor, the Foundation clearly  
13 violated the sanctions in a number of ways. You have to  
14 just look at the text of the regulations in three  
15 different respects. 31 CFR 560.206 prohibits the  
16 purchase of goods and services of Iranian origin. And  
17 that would include food, clothing, medicine, or anything  
18 else that you bought in Iran or paying for the salaries  
19 of the services of Iranian employees.

20 And when you look at the actual text of the statute  
21 in 560.206, note what is prohibited. Engaging in any  
22 transaction, which is defined as purchasing, selling,  
23 transporting, swapping, brokering, approving, financing,  
24 facilitating or guaranteeing. That's in 560.206(b).

25 560.207 prohibits any new investment in Iran.

1 Defined as a commitment or contribution of funds or other  
2 assets or a loan. And that would certainly include  
3 establishing of a bank account, earning interest, like a  
4 certificate of deposit, which the Child Foundation did  
5 for the Lahiji couple; buying rental real estate, buying  
6 other properties like that.

7 And, finally, 560.204 prohibits -- excuse me, I've  
8 been fighting a cold for two weeks, Your Honor.

9 THE COURT: As you go through these, are these  
10 transactions that occurred during the middle of 2006  
11 through early 2007, which was the period set forth in the  
12 charge?

13 MR. GORDER: Some are and some aren't,  
14 Your Honor. And we'll go through some of those facts a  
15 little bit.

16 THE COURT: Shouldn't you be talking about the  
17 ones that occurred during this period of time if that's  
18 the charge?

19 MR. GORDER: Well, Your Honor, the charge  
20 covers a longer period of time. We know the defendant in  
21 his guilty plea tried to limit the time frame. But, I  
22 think in terms of relevant conduct in the case, you've  
23 got to look at what happened over the period of ten  
24 years.

25 Now, to get into the specifics of cash transfers by

1 charities, the Iranian sanctions or the embargo track  
2 exactly the statute, the International Emergency Economic  
3 Powers Act, which is 50 -- 50 U.S.C. § 1702(b)(2), and  
4 they contain a limited exemption from the sanctions for  
5 donations of articles, such as food, clothing, and  
6 medicine, intended to relieve human suffering.

7 Now, the donated articles themselves, they've got to  
8 cross the border; in other words, they've got to come  
9 from outside Iran in this particular case. You can't  
10 send cash in to purchase them.

11 And the case law interpreting the International  
12 Emergency Economic Powers Act has been clear on that.  
13 There is case law interpreting that particular part of  
14 the statute. The *Veterans Peace Convoy* case from the  
15 1980s, the *Holy Land* case in 2001, and there's a recent  
16 unpublished opinion involving another charity in 2009,  
17 *Islamic American Relief*.

18 If you accept the argument that Mr. Angeli is  
19 proposing, that there was an exemption or the -- you  
20 know, for the transfer of cash or anything else to Iran,  
21 if you had a charitable intent, there would be no reason  
22 to put into the regulations a specific exemption for  
23 donated articles. It would be simply surplusage.

24 So what is a charity to do in this situation,  
25 Your Honor? Get a license. It's not impossible to do.

1 In fact, the Child Foundation got one once, for a  
2 very limited purpose, that was good for three months.  
3 And we've cited some examples in our brief of other  
4 Iranian-type charities that have received licenses from  
5 OFAC, too.

6 Now, we're all aware that in any complex regulatory  
7 scheme, you know, good lawyers can find ways to argue  
8 that the words aren't clear. That's why the  
9 International Emergency Economic Powers Act requires that  
10 someone act willfully in order to be charged with a  
11 crime.

12 I think that's what deals with the rule of lenity in  
13 this case, is that the evidence is clear that Mr. Yasrebi  
14 and the Child Foundation, through him, were acting  
15 willfully. They knew what they were doing was illegal.

16 The *Banki* case, I think, supports the Government's  
17 position here. Note 7 said, in the case, that in  
18 determining whether or not transfer of funds to Iran is  
19 prohibited by the sanctions, you've got to look at the  
20 underlying purpose of the transfer, which fits just  
21 perfectly into prohibiting any transaction with an  
22 underlying purpose of buying and selling, and that sort  
23 of thing, in Iran.

24 I just don't accept the proposition that whatever a  
25 charity does is noncommercial. Charities engage in

1 commercial transactions all the time.

2 If the Red Cross goes out and buys a van to haul  
3 blood supplies around, that's a commercial transaction.

4 And, even further, in the *Banki* case, even if you  
5 accept the premise that, well, if somebody is donating  
6 something they have a charitable intent and that's a  
7 noncommercial transaction, the *Banki* case clearly says  
8 that what the Child Foundation did, which was providing a  
9 service for its donors of taking their donation and  
10 getting it to a particular person in Iran, was the  
11 processing of a noncommercial remittance, and that would  
12 be barred, according to the *Banki* case, at page 9 in the  
13 West Law version, under the more general ban about  
14 exporting a service.

15 Now, counsel talks about this letter involving the  
16 Kahrizak Foundation in 1997.

17 First of all, there is no evidence, that I'm aware  
18 of, in the record, or anywhere else, that the defendant  
19 ever saw that letter. It wasn't found. And I checked in  
20 the evidence seized pursuant to the search warrant  
21 executed in this case. It comes in May of 1997, early on  
22 in the sanctions regime, and before, actually, the final  
23 executive order finalizing the sanctions came out in  
24 1997. It involves, Your Honor, a discreet sanitarium in  
25 Tehran that had been operating for 25 years with 1,500

Proceedings - 3/6/12

1 elderly and handicap patients.

2 As Mr. Angeli knows, because we got him the file  
3 from OFAC pursuant to his discovery request, there's  
4 correspondence going back and forth between OFAC and the  
5 Kahrizak Foundation. They asked for the identities of  
6 the directors of the Foundation; minutes of the board  
7 meetings of the Foundation.

8 Now, if any transfer of funds by a charity was legal  
9 under the sanctions, why would they be asking for that  
10 kind of information?

11 I mean, in effect, what this letter is, is a de  
12 facto license to the Kahrizak Foundation. And if this  
13 was the United States v. Kahrizak, counsel would have a  
14 point. Of course we wouldn't be here if this was  
15 United States v. Kahrizak, because of that letter.

16 But as applied to what the Child Foundation did and  
17 as applied to what Defendant Yasrebi knew about this  
18 case, the regulations were absolutely clear.

19 I want to go through a little bit of the evidence to  
20 make that point. And it stretches over this entire  
21 period, Your Honor.

22 THE COURT: I think I've heard -- seen all of  
23 the arguments you're going to make. You can have a few  
24 minutes on this, but --

25 MR. GORDER: Okay. Well, to speed things up,

## Proceedings - 3/6/12

1 let me just remind the Court that in the year 2000,  
2 September 2000, the Child Foundation applied for a  
3 license.

4 THE COURT: What response did they get?

5 MR. GORDER: They got a response that said, "We  
6 got your application."

7 THE COURT: "We got your application."

8 Did they get any advice?

9 MR. GORDER: They didn't get any advice.

10 THE COURT: The Government didn't give them any  
11 advise, as requested?

12 MR. GORDER: No. The Government dropped the  
13 ball.

14 THE COURT: The Government referred the matter  
15 for investigation?

16 MR. GORDER: Right. What they did, and this is  
17 actually in some of the exhibits that the defense  
18 provided you, is referred it to their enforcement  
19 section, because it appeared to be a violation of the  
20 sanction.

21 But what I want to point out, Your Honor, is what  
22 was not in that letter.

23 What was not in that letter was: In the next three  
24 weeks we're going to transfer \$400,000 to Iran to buy  
25 real estate for the Lahijis and rent it rent free for ten

## Proceedings - 3/6/12

1 years.

2 THE COURT: What was in the letter that was  
3 sent in 2001 that the Government lost?

4 MR. GORDER: I don't know. I've never seen it.

5 THE COURT: But they received it?

6 MR. GORDER: They have a --

7 THE COURT: They were asking the same  
8 questions?

9 MR. GORDER: They have some kind of computer  
10 entry that it was received. We've never seen it, and we  
11 didn't find it. So unless defense counsel has it, I  
12 don't know what was in it.

13 THE COURT: Okay. So they were asking  
14 questions about what they could or couldn't do; is that  
15 correct?

16 MR. GORDER: They were asking for a license.  
17 Permission to -- you know, to send the license.

18 But what they did immediately -- I mean, they turned  
19 around, before you could expect the Government to get  
20 back to them anyway, and sent \$400,000 to buy real estate  
21 in Tehran.

22 A couple of months later they tried to transfer  
23 \$30,000 through the Bank of America to a bank in Dubai,  
24 and it was stopped and rejected. And three days later  
25 they sent it through a hawala system to Iran. They



Proceedings - 3/6/12

1 purchased formica. They sent money to Italy in February  
2 of --

3 THE COURT: That charge has been -- will be  
4 dismissed, isn't it?

5 MR. GORDER: Yes. But I think it's important  
6 to note that while this license application was pending,  
7 they were continuing to send funds to Iran.

8 THE COURT: Their purpose was to continue their  
9 humanitarian work with children. Do you agree with that?

10 MR. GORDER: In part, yes.

11 THE COURT: In part.

12 MR. GORDER: In part, yes.

13 THE COURT: Okay.

14 MR. GORDER: Your Honor, now even the defense  
15 concedes that after September 11th it was reasonable for  
16 people to interpret the regulations as controlling the  
17 transfer of funds to the Middle East. And we know that  
18 that's what the defendant felt, because we have his notes  
19 dated November 3rd of 2001. That's in tab 16 of our  
20 exhibits. And maybe we can have that on the board.

21 You can see the translation is on the left.  
22 Permission to send the Child Foundation's exchanged  
23 money, the possibility of obtaining such permission, very  
24 low.

25 So there's no question at that point that they were

1 aware of the effect of the law.

2 Then, Your Honor, I want to direct your attention  
3 to, again, some exhibits of the defense, because I think  
4 they're important.

5 And this would be Mr. Angeli's second declaration.  
6 His Exhibit 13. There was a terrible earthquake in Bam,  
7 Iran, in the latter part of 2003. And because of that --  
8 and this is his Exhibit 13, page 1 -- OFAC, issued a  
9 general license saying for a 90-day period U.S. persons  
10 are allowed to make funds to nongovernmental  
11 organizations to be used in support of humanitarian  
12 relief in response to the earthquake in Bam.

13 That period of time expired. And on the next page,  
14 page 2, you can see that OFAC issued another license for  
15 another 90 days, saying if you want to send money to Iran  
16 for the Bam earthquake, you can do it through -- and they  
17 gave a list of about ten charities.

18 Now, there's no reason -- if the position of  
19 Mr. Newcomb, who signed these licenses, was that you can  
20 send funds to Iran any time you were a charity, there was  
21 no reason to issue these licenses. It's clear the  
22 Child Foundation was aware of it, because a couple months  
23 later, in May of 2004 -- and this is tab 18, page 1 --  
24 and, again, the first paragraph, they made an application  
25 for a license to send \$250,000 to Iran for the Bam

Proceedings - 3/6/12

1 earthquake relief. Because they weren't on the list of  
2 approved charities, that application was denied by OFAC,  
3 in writing. They got an answer that time.

4 So it's certainly clear that by 2004 there's just no  
5 question in their minds.

6 Now, in the papers that have been filed before you  
7 and kind of fitting in with this limited scope of time  
8 during the plea, they claim that somehow there was an  
9 epiphany at the Child Foundation in the fall of 2006, and  
10 that's when they discovered that there was a question  
11 about sending cash to Iran.

12 I'd like to point out for you tab 58. Now, this is  
13 an email, and we'll be looking at page 4, where  
14 Mr. Yasrebi was responding to an inquiry from a potential  
15 donor, and the date on this email is February of 2006.  
16 So it's six or seven or eight months before this limited  
17 time in the plea, but it's interesting to see what he  
18 says.

19 As I stated, in an email: Child Foundation USA only  
20 sends food, clothing, and medicine to Iran. No cash  
21 transfer is ever made by the Child Foundation except when  
22 specifically permitted by the Office of Foreign Affairs.

23 Now, that was just false.

24 I want to briefly talk a little bit about the  
25 reliance on professional advice defense that has been

1 suggested in the papers.

2 There's a suggestion that what the Child Foundation  
3 did was approved by their lawyers and by their  
4 accountants.

5 Well, to claim, you know, reliance on advice of  
6 counsel, you've got to waive the attorney-client  
7 privilege, which they've refused to do in their papers,  
8 so we don't know what the advice was.

9 But I just want to show you what -- so these billing  
10 records that they submitted are really worthless. If we  
11 can take just a brief look at Mr. Angeli's second  
12 declaration, Exhibit 12, we have this bill from  
13 Shawn Khastoo. Review of -- redacted. Legal research  
14 regarding -- redacted. Review of draft -- redacted.

15 We don't know what the advice was, so I think that  
16 you have to discount the information suggested by these  
17 billing records.

18 And to have a legitimate advice of counsel or  
19 professional defense, you've got to tell your lawyers and  
20 your accountant what's really going on. You've got --  
21 the facts have got to be clear.

22 And if we can take a brief look at tab 28, this  
23 was -- this was the only legal advice that we know about  
24 that was provided, because it was put up on the Child  
25 Foundation's website.

1 And if you read through this exhibit, Your Honor,  
2 you'll see that the factual premise here is that there's  
3 no cash going to Iran; that the donations are only used  
4 to purchase food, clothing, informational materials, and  
5 medicine, outside Iran.

6 Then on page 2, there's information in the lower  
7 paragraph here that they've entered into memoranda of  
8 understanding with other Iranian charities where they all  
9 exchange food and other items and not cash.

10 That was clearly false.

11 THE COURT: Can I ask you to wrap up in about  
12 five minutes, Mr. Gorder?

13 MR. GORDER: Sure. Okay. Your Honor, there's  
14 a lot of exhibits in the record.

15 THE COURT: That's what I'm -- I don't think we  
16 need to go through all of them.

17 MR. GORDER: Okay. I want to just show one, if  
18 I may, and then I'll conclude on this -- on this area.  
19 And this would be tab 60, pages -- we'll start out with 7  
20 or 8.

21 Now, you'll recall that there was -- you know,  
22 there's a discussion of these memorandas of  
23 understanding. Well, here's a draft that was sent by --  
24 from Iran to Mr. Yasrebi, and you can see that he crossed  
25 out certain articles. Well, if we go to the translation,

1 which is on pages 2 and 3 -- and the previous page,  
2 please -- in particular, article 3 was crossed out.  
3 Receiving food aid sent from the Child Foundation,  
4 distributing them amongst the needy families, payment of  
5 financial aid to the families under the Child Foundation  
6 coverage according to their needs.

7 So this was what he crossed out in this memoranda of  
8 understanding that was being concocted to show to the  
9 lawyers.

10 I think that is probably the best way of -- of  
11 discussing the reliance on counsel advice.

12 Your Honor, you say I've only got five more minutes,  
13 so let me talk briefly about two other issues. One,  
14 there was a suggestion in the defendant's reply memo that  
15 we had misled the Court about the 2007 tax return that  
16 was filed. I just want to clear that up. Child  
17 Foundation was on an unusual fiscal year. It ran from  
18 June 1st to May 31st. So any particular year would  
19 encompass two calendar years.

20 The document that's in our reply brief, where they  
21 talk about doing things in Afghanistan and other  
22 countries, but never mention Iran, is the return that  
23 covered June 2006 to May 2007. We referred to that as  
24 the 2007, 05 return.

25 The return that is in the defendant's reply brief is

1 actually -- covers the next year. It wasn't prepared  
2 until November of 2008, after the search warrant was  
3 executed in this case, and, as I understand it, it was  
4 never filed with the IRS.

5 Finally, Your Honor, turning to national security,  
6 just briefly.

7 Counsel tries to diminish the effect, the impact, of  
8 the money that was sent to Grand Ayatollah Makarem  
9 Shirazi. That's why I'm saying that some of it is not  
10 humanitarian, Your Honor; nor is the money going to the  
11 Lahiji's bank accounts and their real estate investments  
12 and that sort of thing.

13 They try to diminish that by saying, "Well, it's  
14 only \$100,000."

15 Let's take a quick look at tab 36, page 3. This was  
16 a fax that was sent by the Lahijis to the  
17 Child Foundation at one point in 2006, trying to come up  
18 with some kind of accounting of the money that had been  
19 sent. And you'll notice that there's -- under paragraph  
20 1(a)(3), there's \$250,000 in khoms. And then down in  
21 paragraph 4 there's \$200,000 in khoms where they're  
22 pending receipt. Khoms are -- I'm not quite sure exactly  
23 how to translate it. It's kind of like a tithing. And  
24 based on the conversations that were intercepted, it's  
25 clear that those khoms of Mr. Lahiji's was going to

Proceedings - 3/6/12

1 Makarem Shirazi.

2 I'm not sure how much more, because there's some  
3 talk about --

4 THE COURT: Well, let's not speculate, then.

5 MR. GORDER: -- but certainly more -- and  
6 there's information that they obtained specific  
7 permission from him to raise khoms from other people in  
8 the United States.

9 Now, this is a man who was a prime supporter of  
10 Hezbollah, has bragged about that he and other clerics  
11 allocated a portion of their monies to Hezbollah in  
12 Lebanon, gave out condolences for the death of the person  
13 who was responsible for the killing of the U.S. Marines  
14 in Beirut in 1983. And certainly a national security  
15 matter, beyond just the pumping up of the Iranian economy  
16 that sending \$10 million over a ten-year period would do.

17 We saw in the letters that Mr. Yasrebi wrote to Iran  
18 that the purpose of the Child Foundation was to educate  
19 and prepare children for the Islamic Republic of Iran.

20 Now, Your Honor, there's a lot of debate today about  
21 what U.S. policy should be with regard to Iran; sanctions  
22 versus military actions.

23 Well, if sanctions are to work, they have to be  
24 enforced. And they have to, you know, be enforced across  
25 the board. And to diminish the national security



1 interests in this case, I think would be -- would be  
2 inappropriate.

3 One thing on the potential immigration  
4 consequences -- I don't claim to be an immigration  
5 attorney, but I can say that in my experience with other  
6 Iranian nationals who have been convicted of charges like  
7 this, they have not been deported because of it.

8 So, you know, beyond that, I can't really -- I can't  
9 really speak.

10 THE COURT: All right. Thank you, Mr. Gorder,  
11 your co-counsel wanted a short period of time.

12 I do want to limit this.

13 MR. ATKINSON: I'm getting that message loud and  
14 clear.

15 THE COURT: I'm meeting with the judges of the  
16 court of appeals at a certain time here today, at 12:00,  
17 so I'm -- we need to move on, so --

18 MR. ATKINSON: Okay. I'm getting that message  
19 loud and clear.

20 Judge King, good morning, and my remarks were  
21 intended to take about a half hour or so, and I'm -- I'm  
22 going to --

23 THE COURT: Well, I've read everything you  
24 submitted. There's not much more that could be  
25 submitted, that I'm aware of, at this point, but go

1 ahead.

2 MR. ATKINSON: Well, what I'd like to focus on  
3 this morning, then, in light of those limitations, is one  
4 point that is relevant both to the correct sentence under  
5 3553(a) and under the guidelines, and it's responsive to  
6 my friend Mr. Angeli's claim that all of Mr. Yasrebi's  
7 misconduct, all of his criminal activity, was backward  
8 looking; that is, that it was designed to cover up  
9 criminal behavior in which he previously engaged, and  
10 none of it was designed to cover up ongoing or future  
11 criminal activity. That makes a difference both in the  
12 guideline analysis and, more importantly, how you view  
13 these crimes. Was he simply looking back at something  
14 that he committed and trying to cover it up, or was he  
15 enabling and facilitating ongoing criminal behavior?

16 And there's a couple of examples from the evidence  
17 that I'd like to point out, about which you may not be  
18 fully aware, that should be of help to you in determining  
19 where Mr. Yasrebi should be sentenced.

20 The first example has to do with this tuition  
21 program that the Child Foundation was running.

22 If we could have tab 39 up, please, and let's just  
23 go straight to page 1.

24 I initially had intended to show you both the Farsi  
25 and the English here, because it does make a bit of a

1 difference, but this is a -- an email in which  
2 Mr. Yasrebi tells his counterpart in Iran, "I made the  
3 request that you not discuss these topics" -- meaning,  
4 this tuition program by which the Child Foundation would  
5 pay the tuition of Iranian students in London, that would  
6 discharge their tuition obligations in Iran at an  
7 institution known as the Azad University.

8 "I made the request for you not to discuss these  
9 topics with everyone. Announcing of these topics openly  
10 could place all of us in jail in America."

11 From this, you can conclude as follows, I'd submit,  
12 Judge -- and I'd be stunned if my friends at the other  
13 side of the table would argue to the contrary -- you can  
14 conclude that the defendant, by this point in time, had  
15 gathered that the provision of services in Iran was  
16 prohibited, and there can be no dispute but that tuition  
17 for educational services is a service under the holding  
18 in *Banki*, which is essentially providing something of  
19 value to someone else, and, I might point out, whether or  
20 not there's any consideration for it, contrary to what  
21 counsel argues -- argued earlier.

22 Number 2, on October 8th he knows that the provision  
23 of tuition in Iran is against the law and that he  
24 shouldn't do it.

25 Counsel argues that he did the right thing after

1 that and he stopped this tuition program. What I want to  
2 show you is evidence to the contrary.

3 Can we have tab 61, please?

4 Just three weeks later, on Halloween of that same  
5 year, here's Dr. Yasrebi soliciting future tuition  
6 donations. In the second paragraph: He needs to double  
7 this amount if he wishes to pay for her tuition in the  
8 next semester, as well. Kindly contact Mr. Nagahvi and  
9 let me know.

10 Can we have tab 62, please?

11 We have the translation first. And here's an  
12 indication that in December, two months after he's made  
13 this statement that he knows that this tuition program  
14 can land him in jail in the United States, he's talking  
15 about -- he's being made aware of a donor who has just  
16 donated to sponsor a loan program for 20 college students  
17 in Iran to the tune of \$14,000. And there's talk about  
18 him being willing to sponsor some more.

19 So his very conduct that he knows is criminal is  
20 occurring two months later.

21 If we could go to page 3, please.

22 As evidence of that in November, five or six weeks  
23 after he makes this statement that he knows that this  
24 tuition program can provide him in jail, we have a  
25 receipt for the donation of 13- or \$14,000 to the Jamshid

1 Foundation. And if you look down at the bottom of the  
2 box, you can see it's for student loans.

3 So if we can skip ahead to tab 63 -- I'm sorry.  
4 Yes, tab 63. Here we have an email in which -- a  
5 translated email in 2008. Judge, two years later. Two  
6 years after the defendant indicates he realizes that this  
7 is unlawful. And it makes it very clear that they're  
8 still continuing to use U.S. funds. And let me quote,  
9 "Please see the attached detail list of the expenses paid  
10 out of the monies received from the Child Foundation  
11 USA."

12 And going down to the table, one can see a reference  
13 to payments made to assistance seekers, payments made to  
14 college students. 95 million rials, or a significant sum  
15 of money translated into U.S. dollars.

16 One example of his facilitation of ongoing and  
17 future criminal conduct, even after he knows that it's  
18 against the law.

19 Example number two: There's reference in the papers  
20 to this what my co-counsel, Mr. Gorder, characterized as  
21 an epiphany, but let's call it a bellwether event, that  
22 Mr. Angeli hangs his hat on as being the point in time at  
23 which there's a memo written by a Child Foundation  
24 employee by the name of Kirkwood, who, according to their  
25 theory of the case, makes the defendant aware that what

1 he's doing is illegal.

2 At that point in time they're running a charity in  
3 Canada, as well. The regulations make it very clear that  
4 a U.S. citizen can't, in Canada or in another foreign  
5 country, do what he's prohibited from doing when in the  
6 United States.

7 Counsel's memo says that far from doing the wrong  
8 thing here, Mr. Yasrebi did exactly the right thing. He  
9 stopped any backroom support of this Child Foundation,  
10 Canada, just as he had been advised by his employee who  
11 had written a white paper, essentially, telling him that  
12 any continued support to Canada would be unlawful.

13 Publicly, and to his employees, he's stating, "We're  
14 out of Canada. We're finished. We're not going to  
15 support them anymore."

16 The facts prove differently, Judge.

17 Could we have tab 77?

18 That is a conversation right during the relevant  
19 time period of October 23rd, 2006. On page 1, the  
20 communicants are the defendant and his subordinate at the  
21 Child Foundation, Mr. Sherafi, on page 2.

22 This is going to take just a moment, Judge.

23 The upshot of it is, as you can see, the defendant  
24 points out to Mr. Sherafi that our office in Canada is  
25 closed. It's closed, because it's crystal-clear that

1 it's illegal and one of my employees, Mr. Kirkwood, is  
2 about ready to blow the whistle on us, and we're about to  
3 be arrested for this.

4 He's afraid of going to jail.

5 He says: Essentially, then, with regards to Canada,  
6 although it's discontinued, but I'll continue. We worked  
7 too hard for it, and I just can't discontinue it.

8 On the next page, please, page 4, he clarifies that  
9 he had an employee doing exactly what counsel said that  
10 he put a stop to; that is, backroom support for Canada.  
11 She's continuing the work. And about midway through the  
12 page, I'll pick up and quote -- this is Dr. Yasrebi  
13 speaking -- We have to continue. If you like, with  
14 regards to your salary, it's Canada. It won't be paid  
15 from our office, but you'll be paid directly from Canada.

16 But he essentially solicits his subordinate,  
17 Mr. Sherafi, to continue to provide backroom secret  
18 support to Canada, even though he's represented to his  
19 employees and others that they've stopped doing that.

20 Judge, I can't emphasize enough how significant the  
21 Lahiji evidence is in this case. I intended to go  
22 through it for you again and to cover it in some detail,  
23 but I think you get it.

24 And I just want to make one point about it, because  
25 it shows ongoing criminal conduct even more clearly than

1 the scheme itself, which sort of speaks for itself, the  
2 provision of the secret accounts in Iran that weren't  
3 really charitable donations at all enabling the Lahijis  
4 to take deductions from their income tax and to  
5 essentially set up a retirement fund in Iran and to  
6 purchase real estate in Iran, among other things.

7 But tab 59 -- please, Ms. Rallis -- is worth looking  
8 at. And this is one in which I think we need to look at  
9 the Farsi first. So if you can go to page 3 first, you  
10 see this letter in the Farsi with a different style of  
11 handwriting below it -- that Ms. Rallis has just  
12 highlighted for you.

13 I'd like to point to the translation on page 1.  
14 Essentially, what we have here is a letter written by  
15 Mr. Iranshahi to the defendant for his approval making  
16 more widely known -- proposing to make more widely known  
17 the fact that the Lahiji couple had this -- these two  
18 certificates of deposit, as it turns out, for \$700,000,  
19 that the Child Foundation was prohibited from touching  
20 until some point in time way off into the future, when  
21 the principal was going to be used to engage in another  
22 embargo violation. That is a construction project and  
23 the interest would come back to the Lahijis.

24 There's a proposed letter that Mr. Iranshahi is  
25 going to disseminate more widely. And the part of the



1 letter in the Farsi that was handwritten down below, that  
2 was different, appears on the next page.

3 What does the defendant say? Does he say, "We need  
4 to pull this investment back. We need to stop this. We  
5 need to comply with the law here"? He says, "Why have  
6 you correlated these monies to us? You were not supposed  
7 to say that the Lahiji money was being held in the trust  
8 in the bank."

9 Your Honor, he's facilitating ongoing criminal  
10 conduct. Rather than pulling it back, he's making it  
11 easier and facilitating it.

12 With regard to the Madhi transactions, the  
13 defendants both say that it's unfair for us to  
14 characterize these transactions as trade-based money  
15 laundering, because simply -- that's an overstatement, as  
16 I understand their position. But the defendant and  
17 Mr. Iranshahi engaged in genuinely complicated  
18 transactions that took us a significant period of time to  
19 unravel.

20 If we could have 29-I, please. The gist of the  
21 conspiracy is made clear here, essentially, in May of  
22 2006. Now, Judge, this is four months before -- or  
23 three-and-a-half months before this supposed epiphany  
24 from the Kirkwood white paper that he wrote complaining  
25 about all the illegal conduct that he was observing

1 occurring around him. We have a situation where  
2 Mr. Iranshahi reveals the essence of the commodity  
3 scheme.

4 Essentially, the funds that came from the  
5 United States, half of them were passed through to Iran  
6 without any purchase of food, which was what the  
7 defendant in Child Foundation claimed that they were  
8 doing.

9 The other half would be used for the purchase of  
10 food, Judge; but it would be sold commercially. I don't  
11 think there's any dispute from anybody that a regulation  
12 within the Iranian sanctions regime makes it very clear  
13 that commercial food transactions are prohibited absent  
14 the license. And there's a specific provision describing  
15 a one-year license that someone who wants to engage in  
16 those sorts of transactions can obtain.

17 So, essentially, the public stance was, "We're only  
18 distributing food," and, in reality, there wasn't any  
19 food that they were distributing. Half of the money  
20 coming from the United States was being funneled through  
21 an Iranian trading company that was generating false  
22 receipts for Child Foundation's books and records. And  
23 the other half was being siphoned off and reconsigned to  
24 a commercial food vendor in Iran, but disguised as  
25 transactions in which Child Foundation was the recipient

1 of the food in Iran. Fairly clever. Clever enough to  
2 warrant the characterization of their conduct as being  
3 trade-based money laundering.

4 They tried to make it look like these were exempt  
5 transactions, when, in reality, the false documents,  
6 generated months before this supposed epiphany, covered  
7 them to make it look as if they were lawful. This is a  
8 concealing of ongoing criminal activity.

9 The defendant claims that this was conduct stopped  
10 in early 2007 -- this is the last point I want to make,  
11 Judge, and then I'll sit down -- after the legal memo to  
12 which my co-counsel, Mr. Gorder, referred a few minutes  
13 ago, appeared on the Child Foundation website, this  
14 February 2007 memo, where they claim that Child  
15 Foundation is only sending food into Iran and they may  
16 exchange a little bit with other charities. But counsel  
17 has drawn a bright line there and said, "It really did  
18 stop. Trade-based money laundering really did stop at  
19 some point in early 2007." Now, I'm not so sure that  
20 that's true.

21 Can we have tab 61, please?

22 The following were all -- sorry. It's tab 69.

23 Okay, yes, tab 69.

24 These are a series of invoices, Judge, that suggest  
25 very strongly that the misconduct that I described a few

Proceedings - 3/6/12

1 minutes ago continued long after February of 2007 when  
2 they received, by all accounts, legal guidance to stop  
3 what they were doing, which they chose to ignore. And  
4 this is after they misrepresented what they were doing to  
5 their counsel in the first place.

6 Note at the top that we have an invoice number  
7 involving a particular quantity of food that they  
8 purchased for \$172,000 in U.S. currency. The invoice  
9 number is DEX 715. It's dated August of 2007.

10 Next exhibit, please. Next consecutive exhibit. I  
11 believe it's 70.

12 Here's its sister exhibit, Judge. And we see this  
13 time and time again in the evidence. This one is  
14 numbered the same, DEX 715, except it has the appendage C  
15 added. So this is the second set of books, if you will,  
16 that Child Foundation continued to keep.

17 Down at the bottom we have the price, not in U.S.  
18 dollars this time. It involves the same amount of food  
19 and is exactly the same order. It's 1.3 million UAE  
20 dirhams. The going exchange rate at the time would make  
21 that north of \$350,000.

22 So they actually paid 170-plus thousand dollars, yet  
23 got a phoney receipt showing that they paid \$350,000.

24 If I could have the next exhibit, page 71.

25 THE COURT: How many more exhibits do you

1 intend to cover, because I may have to make some changes  
2 on my schedule here.

3 MR. ATKINSON: Two more, and I'll sit down,  
4 Judge.

5 THE COURT: All right.

6 MR. ATKINSON: This is a document associated  
7 with the same transaction. And what I'd like to point  
8 out is the name of the consignee. In the middle of the  
9 document -- Ms. Rallis is going to highlight this for  
10 you -- this isn't Child Foundation. This is a person by  
11 the name of -- if I'm not doing an injustice to the  
12 pronunciation -- Mohammadian. I can tell you that in all  
13 of the investigation work we've done in this case, the  
14 thousands and thousands of pages of evidence that we've  
15 uncovered, this is the first time we've seen this name.  
16 It appears to us to be a reconsignment to a third party.

17 But even if it isn't -- can we have 74, please.

18 This is the document that came back to Child  
19 Foundation to be on its books and records about a year  
20 after they claim that they had the epiphany.

21 And if you could highlight the first line.

22 This is the transaction about which we're speaking.  
23 If you'll recall the very first exhibit, Judge King, show  
24 that they bought this stuff for something slightly north  
25 of \$170,000.

1 About midway through this column you'll see an  
2 amount in U.S. It's been ballooned up to \$334,000. So  
3 what happened here is that they continue to take about  
4 half the money as a pass-through, even after they've been  
5 told by counsel to cut this stuff off -- out, as if it  
6 wasn't obvious from the generation of the false documents  
7 that they had been doing all along.

8 And it looks to us as if any food that was generated  
9 by this order was siphoned off to a third-party  
10 consignee, just like they were doing earlier. But, in  
11 any event, it's clear that at least they're keeping a  
12 double set of books in order to make it look like they're  
13 paying just slightly less than twice as much for the food  
14 than they're paying in reality.

15 This is the sort of conduct, ongoing criminal  
16 activity, that warrants the sentences that we recommend  
17 in this case.

18 Thank you.

19 THE COURT: All right. Counsel?

20 MR. ANGELI: Your Honor, I promise to keep my  
21 remarks relatively brief and to keep it to the issues  
22 that counsel has raised, and I won't respond to all of  
23 them. For example, I think the issue with the Lahijis is  
24 covered adequately in our briefs.

25 THE COURT: It is.

1 MR. ANGELI: Thank you, Your Honor.

2 I respectfully suggest that the Government has been  
3 involved in this case for so long that they've lost sight  
4 of the forest through the trees. And we're focusing here  
5 on issues that don't go to the heart of what this case  
6 really is about.

7 First, I want to just say, Your Honor, at the risk  
8 of beating a dead horse, on the underlying legal issue,  
9 Mr. Gorder still has not answered the underlying  
10 question. He's referred to two cases -- the *Holy Land*  
11 case and the *Veterans Peace* case -- that had nothing to  
12 do with the ITRs. There weren't transactions or  
13 transfers of money to Iran. And those cases talk  
14 specifically about the humanitarian aid exemption.

15 Mr. Gorder still doesn't deal with the fact that the  
16 ITR regulations have a specific carve-out that says  
17 noncommercial remittances are permitted. And he still  
18 hasn't told us what he thinks the words "noncommercial  
19 remittance" means.

20 In our view, Judge, charitable remittances are  
21 clearly permitted. He's right. Charities can engage in  
22 commercial transactions. He talked about the Red Cross  
23 buying an ambulance. That's a commercial transaction.  
24 But when a charity gives something away and gets nothing  
25 in return -- they don't get an ambulance back -- that's

Proceedings - 3/6/12

1 not a commercial remittance. And that's what happened  
2 here. Child Foundation gave money away and got nothing  
3 in return.

4 I want to talk, Your Honor -- briefly respond to the  
5 issues that Mr. Gorder and Mr. Atkinson raised. I want  
6 to start out, Judge, by pointing out that this case  
7 started -- this whole legal case started 12 years ago  
8 when Child Foundation, on its own initiative and at  
9 Dr. Yasrebi's direction, wrote this letter to OFAC in  
10 September of 2000.

11 And, Judge, Mr. Gorder has referred to this letter  
12 as an application for a license. I want to point  
13 Your Honor straight to the first paragraph of this  
14 letter, which makes absolutely clear that what Child  
15 Foundation was seeking when it wrote to OFAC in 2000 was  
16 a, quote, determination with respect to the applicability  
17 of the regulations.

18 They weren't asking for a license. They were going  
19 to OFAC and they were asking for help. "Are you going to  
20 take the position, OFAC, that what we are doing is  
21 illegal?"

22 And in that letter, as Your Honor pointed out, which  
23 I think was a fair request to a government agency who  
24 should be in the business of helping people like  
25 Dr. Yasrebi and Child Foundation when they ask for



1 help -- and in that letter, Judge, Dr. Yasrebi openly  
2 disclosed basically everything that Mr. Atkinson and  
3 Mr. Gorder have talked about today. They disclosed that  
4 the major part of its efforts and capital were being  
5 spent in Iran. They disclosed that they used the sister  
6 charity, Refah Kudak. They disclosed they had already  
7 provided aid to a thousand kids. And they disclosed that  
8 they were paying for tuition, as Mr. Atkinson was talking  
9 about today, and clothing and food for all these kids.  
10 And they even, Judge, included a pie chart that showed  
11 that 95 percent of all the money that Child Foundation  
12 spent went to Iran.

13 It was absolutely clear right from that moment  
14 forward exactly what they were doing, but they didn't get  
15 an answer from OFAC.

16 And Dr. Yasrebi didn't just sit on his hands when he  
17 didn't get an answer from OFAC. He sent another letter  
18 in 2001. And OFAC never responded to those letters. To  
19 this day, Judge, OFAC has never responded to either one  
20 of those two requests for help.

21 And why not?

22 In its papers, the Government says that OFAC's  
23 response to the Child Foundation, quote, slipped through  
24 a bureaucrat crack. Slipped through a crack. It was an  
25 oversight, they say to the Court. And, Judge, that is

1 just flat-out false.

2 And how do we know that? We know it because we have  
3 this internal memorandum from OFAC that was written  
4 shortly after September 11th, which is displayed up on  
5 the screen. And it's critical to note, Judge, that this  
6 memo was never shared with Dr. Yasrebi. It was never  
7 sent to Child Foundation. It was never sent to Child  
8 Foundation's lawyers.

9 I want to point out a couple things about this  
10 letter. First of all, it recognizes Child Foundation's  
11 request for what it really was. Child Foundation wrote,  
12 seeking a determination as to the applicability of the  
13 regs. Again, the first layer in our analysis. Not a  
14 license. "Do you think, OFAC, that the regulations  
15 apply?"

16 OFAC went on to recognize the next logical step in  
17 this process. The next logical step would have been to  
18 respond to Child Foundation by asking for more  
19 information. But they didn't take that logical step.  
20 And why not? Because the U.S. Attorney's Office had  
21 decided to launch a criminal investigation here.

22 An investigation into what? At this point OFAC  
23 could have written back to Dr. Yasrebi and said, "You  
24 know, the regulations don't allow you to do what you're  
25 doing. Please stop." But they didn't do that.

Proceedings - 3/6/12

1           So what is it that they investigated? Whether or  
2 not Child Foundation was actually sending money to Iran  
3 without a license? Of course not. Dr. Yasrebi had told  
4 them that, in an 86-page submission, in great detail.  
5 What they investigated and what consumed them for the  
6 next eight years -- the international travel, the search  
7 warrants, the FISA warrants, the secret  
8 middle-of-the-night searches -- all of that was done  
9 because the Government thought it had a terrorism case on  
10 its hands.

11           And in their papers they say we criticized them for  
12 investigating the way that they did it and using these  
13 tools. And that's not true, Judge. In fact, in our  
14 papers we expressly recognized that there were good  
15 reasons for them to investigate the way they did.

16           Our criticism relates to what they did at the end of  
17 that investigation, when they realized that this case was  
18 not about terrorism and when they realized that, in fact,  
19 Child Foundation was doing exactly what Dr. Yasrebi had  
20 told them they were doing eight years before. And  
21 instead of at the conclusion of that investigation  
22 finally responding to Dr. Yasrebi for help, they filed  
23 criminal indictments. They came to this Court and said,  
24 "Look what we found. Child Foundation has been sending  
25 money to Iran for years without a license, and they've

1     been hiding it for a decade."

2             And to spice it up, Your Honor, they cited some  
3     language that Dr. Yasrebi used in a scholarship  
4     application 30 years ago, and they threw in words like  
5     "Hezbollah" and "Grand Ayatollah" in an attempt to  
6     frighten this Court.

7             And adopting a classic kitchen sink approach to  
8     prosecution, they try to tar Dr. Yasrebi with the  
9     decision that some private donors made about how to  
10    reflect their donations on their tax returns. It's that  
11    approach, Judge, that we criticize, because it isn't  
12    fair. It isn't right.

13            The truth is that the Government knew from the  
14    beginning that Child Foundation was sending money to  
15    Iran. They knew it because Dr. Yasrebi told the IRS that  
16    in his 501(c)(3) application in 1994. They knew it  
17    because he submitted an 86-page submission to OFAC in  
18    2000 and a letter in 2001 and another letter in 2004 and  
19    another one in 2007. They knew it because Dr. Yasrebi  
20    and Child Foundation literally advertised in the  
21    newspaper and talked to members of the United States  
22    Congress about it and to CNN. And all the while the  
23    Government sat idly by, for eight years, watching it all  
24    happen, deciding secretly not to respond to Dr. Yasrebi's  
25    request for help and, instead, coming into this court

Proceedings - 3/6/12

1 with a criminal indictment asking you to put him in jail  
2 for two-and-a-half years. That's what we criticize,  
3 Your Honor.

4 And we believe that that context is critically  
5 important when Your Honor is weighing the different views  
6 that the parties have presented to you about what this  
7 case is actually about.

8 I also want to just spend a few minutes, Your Honor,  
9 talking about these issues that Mr. Gorder raised about  
10 concerns that were brought to Dr. Yasrebi's attention and  
11 how he responded to them at various points in time. The  
12 first one that he raised up on the screen here is a note  
13 that was seized from Dr. Yasrebi's office. And the  
14 Government believes that this is Dr. Yasrebi's notes,  
15 probably after talking to counsel, and they directed the  
16 Court's attention to this specific passage: Permission  
17 to send the Child Foundation exchanged money. The  
18 possibility of obtaining it, very low.

19 Now, if Dr. Yasrebi did get that advice from counsel  
20 at this point in time, it's not particularly surprising  
21 that he did. His letter to OFAC had been sitting  
22 unanswered for over a year. 9/11 had just happened two  
23 months before. It probably wasn't particularly likely  
24 that OFAC was going to write to him and say, "Go ahead  
25 and send the money."

Proceedings - 3/6/12

1       The Government doesn't point, Your Honor, to the  
2       very next entry of this note. "Tell us what to do. Tell  
3       us what to do." He was asking the people who were  
4       consulting with him at the time.

5       And, Your Honor, we've provided billing records  
6       showing you that at the time Dr. Yasrebi was consulting  
7       with a lawyer, Mr. Khastoo. He was consulting with  
8       Mr. Panetta at KPMG.

9       The Government criticizes us for not waiving the  
10      privilege. To that, Your Honor, I'll only say this: The  
11      privilege is not Dr. Yasrebi's to waive. It belongs to  
12      the Child Foundation. And most of the billing records  
13      that we've submitted to the Court are from the firm of  
14      Berliner Corcoran and Rowe, who have an ongoing  
15      relationship with Child Foundation. And obviously a  
16      waiver of the privilege with respect to BCR's advice  
17      could have implications well beyond this case.

18      But the important point here, Your Honor, is  
19      Dr. Yasrebi asked for help, and this is what the lawyers  
20      gave him. They said to him -- or what's reflected on  
21      here, with the notations of Khastoo and Panetta, is this  
22      notion of sending money to Switzerland and then to Iran.

23      And as Your Honor knows, Switzerland does not have  
24      an embargo against Iran. So what this looks like is that  
25      Dr. Yasrebi is being told, "This system you have now,

1 this hawala system, don't do it; but if you send money to  
2 Switzerland, they can send it to Iran."

3 Now, is this the advice that I would have given to  
4 Dr. Yasrebi if I wanted to give him conservative advice  
5 about how to comply with the regulations? No, it's not.  
6 And, frankly, I don't think Mr. Khastoo was a very good  
7 lawyer.

8 But what these documents show is when an issue was  
9 raised with Dr. Yasrebi, he consulted with professionals  
10 and he changed the way Child Foundation operated.

11 And, Judge, the Government's own documents that show  
12 money going through these money exchangers show that  
13 those exchanges stopped right at this same period of time  
14 when he was consulting with the professionals about this  
15 Swiss operation.

16 He heard a concern, he consulted with professionals,  
17 a solution was proposed, and he stopped what they were  
18 doing.

19 There's one more example that Mr. Gorder raised.  
20 And that is the letter that Dr. Yasrebi got from OFAC in  
21 2004 that may have raised additional concerns about  
22 this -- the way the Child Foundation was doing business.

23 First of all, I'll note that OFAC said, "You can't  
24 send this \$250,000 for the Bam earthquake," and  
25 Dr. Yasrebi responded by not sending the \$250,000 for the

1 Bam earthquake.

2 But perhaps even more important than that, at that  
3 time when Dr. Yasrebi received that letter from OFAC, he  
4 started to lose faith in Mr. Khastoo, and maybe this  
5 advice about Switzerland is bad advice. And we've given  
6 Your Honor a note that Dr. Yasrebi sent to his board at  
7 that point in time, saying, "You know, Khastoo has put us  
8 in a tight spot here."

9 And the very day he sent that email to his board  
10 Dr. Yasrebi picked up the phone and he hired new lawyers;  
11 the Berliner Corcoran and Rowe firm. Just one of the  
12 leading law firms in the country in this area of the law.

13 And the bills we submitted to the Court show that in  
14 late 2004 and early 2005 the Berliner Corcoran and Rowe  
15 firm was providing advice intensely to Child Foundation.  
16 And in late April 2005 they talked specifically about  
17 this Swiss arrangement and about compliance efforts.

18 And the last entry, Your Honor, on this bill,  
19 discussing that issue, is April 25th. And, again, the  
20 Government's own documents, which summarize the transfers  
21 to Switzerland -- this is page 3 of the three-page  
22 document -- show that on the very next day, after he  
23 talked to his lawyers about this, that was the last time  
24 they ever sent money through Switzerland.

25 So, once again, an issue is raised. He goes out and



Proceedings - 3/6/12

1 he hires new lawyers. He talks about this program, and  
2 he stops immediately and transitions to this new program  
3 whereby they are buying food in Dubai and transmitting it  
4 to Refah Kudak in Iran.

5 That was clearly the safest way to proceed, because,  
6 even as the Government concedes, sending food is clearly  
7 permitted by the regulations.

8 Now, sometimes Refah Kudak sold that food before it  
9 reached Iran; sometimes after it reached Iran. But all  
10 of the money that Child Foundation donated and got  
11 nothing in return went to help the children that  
12 Dr. Yasrebi has spent the last 15 years of his life  
13 trying to help.

14 As time went on, discussions continued at Child  
15 Foundation. Mr. Atkinson has gone through some great  
16 detail showing what those discussions were. And were  
17 people raising concerns? Yes, they were. And what was  
18 Dr. Yasrebi's response to that? He ordered a  
19 comprehensive -- in 2006, a comprehensive audit and legal  
20 review of everything going on at Child Foundation.

21 And, ironically, it's that audit that he ordered  
22 that ultimately led him to commit the conduct for which  
23 he pled guilty here. Because it was in the course of  
24 that audit that Mr. Kirkwood raised his concerns. And  
25 when he did, Dr. Yasrebi frankly panicked. They were in

1 the middle of this comprehensive audit, these issues came  
2 up, and for a period of a few months -- and we don't  
3 limit it to just October of 2006, Your Honor -- for a  
4 period of a few months Dr. Yasrebi and Mr. Iranshahi  
5 admittedly engaged in the conduct that he pled guilty to  
6 here, trying to phoney up documents. And we don't hide  
7 from that. He's admitted it, and he's pled guilty to it,  
8 and he's here today to be sentenced for that conduct.

9 I think, Your Honor, at the end of the day what does  
10 this all add up to? And how do you judge a man and the  
11 things he did? Dr. Yasrebi committed a crime. That's  
12 true. But Dr. Yasrebi also had the courage, the energy,  
13 and the commitment to do something that few of us will  
14 never do. He recognized inequality and suffering in the  
15 world and he did something about it. He really did  
16 something about it.

17 And if a man is judged by the totality of his  
18 actions, Your Honor, Mehrdad Yasrebi should be favorably  
19 judged. Sending him to prison, taking him away from his  
20 family and his community would serve no useful purpose in  
21 this case, Judge, and that's why we respectfully request  
22 that the Court impose a sentence of probation with  
23 whatever conditions you deem appropriate.

24 THE COURT: All right. I've cancelled my  
25 appointment at noon, and we're going to go through and

## Proceedings - 3/6/12

1 complete the sentencings today.

2 I want to take about a ten-minute recess at this  
3 point and come back at ten minutes of, and we'll  
4 continue -- now, do you have any further presentation you  
5 wish to make other than Dr. Yasrebi?

6 MR. ANGELI: Only to answer any questions that  
7 Your Honor has.

8 THE COURT: Okay. Government? I don't want  
9 additional argument. I just want to know if you have  
10 anything else you want to present.

11 MR. GORDER: No, Your Honor.

12 THE COURT: We'll be in recess, then, until ten  
13 of.

14 THE LAW CLERK: The Child Foundation?

15 THE COURT: Oh, I'm sorry. I kind of missed  
16 you over here. You've been quiet.

17 MR. CALO: We've been very quiet, Your Honor.  
18 We have, in the time that has passed, scaled down our  
19 arguments and we do want to say a few brief comments.

20 THE COURT: You'll make it short, I hope.

21 MR. CALO: I've got that hint, Your Honor.

22 THE COURT: Okay. Thank you.

23 (Recess taken.)

24 THE CLERK: All rise.

25 THE COURT: I apologize for keeping you

Proceedings - 3/6/12

1 waiting. At this point we'll hear from Mr. Calo.

2 MR. CALO: Thank you, Your Honor.

3 Again, following the Court's dictates, I'll try to  
4 be very, very brief. I know the Court has read all our  
5 papers and have studied the exhibits. I just have one  
6 point to make on each separate area we're contesting  
7 here. The fine and the probation for the Foundation.

8 My first point relates to what the Court said at the  
9 commencement of the hearing. The Court had indicated  
10 that it was going to go with the guideline of 2M5.1,  
11 which, of course, would carry over from the individual to  
12 the Foundation itself. And then the Court indicated,  
13 correctly that probation is recommending a \$60,000 fine  
14 and the Government is recommending a \$125,000 fine. But  
15 the Court went on to say, as I recall, that those are  
16 both departures from the guideline. When, in fact, as  
17 probation, in the presentence report, makes clear, and as  
18 our papers make clear, once you go to the 2M5.1, it's not  
19 listed under chapter 8 of the guidelines. So the Court  
20 is right back into 3553 and 3572, which means that it's a  
21 clean slate.

22 There is no guideline number that begins the  
23 analysis. And maybe perhaps the Court meant that. I  
24 just wanted to clarify that one point.

25 THE COURT: I agree with you. At this point

Proceedings - 3/6/12

1 the Court has discretion to order a fine within the  
2 statutory amount.

3 MR. CALO: Right. From zero right up to the  
4 statutory maximum.

5 THE COURT: That's my understanding.

6 MR. CALO: There's no guideline recommending --

7 THE COURT: That's my understanding.

8 MR. CALO: Okay. And that's all I wanted to  
9 say.

10 The second point I wanted to make, Your Honor, is  
11 just on the probation. It's a point we didn't make in  
12 our papers, but I will be very brief about it. I wanted  
13 the Court to realize that there's a very different  
14 feeling for probation between a charity and a  
15 corporation. I'm sure corporations have appeared for  
16 sentencing in front of this Court. I've represented  
17 corporations from environmental crimes, financial fraud  
18 committed by executives of the corporation, and what is  
19 important is even when those corporations are placed on  
20 probation, their customers do not flee; their suppliers  
21 do not flee. They may have a momentary dip in their  
22 stock price, but it doesn't affect them. Citicorp,  
23 Goldman Sachs has had misconduct. There's been no run on  
24 those banks. They continue as always.

25 But charities are a much different animal,

Proceedings - 3/6/12

1 Your Honor. Charities -- the goodwill is very, very  
2 fragile. Donor dollars are very scarce. People can go  
3 elsewhere. And so what it is is can be more of a  
4 death-knell to a charity than it can be for a private  
5 corporation. And so for this -- for this organization,  
6 to put it on probation is sending a message to the  
7 general public that something is still amiss, something  
8 needs to be guided by the Court and by the probation  
9 office, when, in fact, this foundation has policed  
10 itself, rehabilitated itself, set up internal and  
11 external procedures to keep it in line, and it has OFAC  
12 and IRS oversight continuously.

13 So if you weigh the -- the benefit of probation is  
14 very, very marginal. It's not necessary. Every  
15 condition that the probation office has, every suggested  
16 condition that the guidelines has, we have satisfied.

17 So I just wanted the Court to be aware that it's  
18 much different to place a charity on probation. It has  
19 major consequences that a corporation will not suffer.

20 And, on that, I'll submit it, unless the Court has  
21 any questions.

22 THE COURT: Thank you.

23 Mr. Angeli, your client wishes to be heard, I  
24 understand.

25 MR. ANGELI: He does, Your Honor.

Proceedings - 3/6/12

1 THE COURT: Thank you. I'll get your name  
2 right. Yasrebi?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you had an opportunity to  
5 review the presentence reports that were prepared by  
6 probation for both the Child Foundation and for yourself?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Do you wish to make any  
9 statement to the Court at this time regarding the charges  
10 against you and your sentence?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. If you would, please.

13 THE DEFENDANT: Thank you for giving me the  
14 time to speak.

15 Your Honor, I have broken the law. I accept  
16 complete responsibility for what I did. I stand here  
17 ready to accept whatever sentence you decide is  
18 appropriate. I'd like to take this time to tell you how  
19 I feel about what I have done. Child Foundation was my  
20 passion for many years. My work with Child Foundation  
21 was always for the purpose of helping the struggling  
22 children in Iran. I've never used any of the  
23 Foundation's money to enrich myself. I'm deeply hurt by  
24 any accusation that I did so.

25 For most of my time with Child Foundation we

1 honestly tried to do things in what we thought was the  
2 right way. As you know, however, during one period of  
3 time I did not do what I thought was right; but, instead,  
4 obstruct people about how Child Foundation was operating.  
5 I have no excuse for that.

6 I did what I did because I was trying to help Child  
7 Foundation, but that does not make it right.

8 By doing what I did, I not only broke the law, but I  
9 jeopardized the Foundation and its mission and caused a  
10 lot of pain and difficulty for many innocent people.

11 Your Honor, I am proud of what I did for Child  
12 Foundation and its children over the years. I certainly  
13 am not proud of the conduct that I admitted to this  
14 Court. By doing what I did, I brought shame on myself.

15 I can't change what I have done, but I can do my  
16 best to live the remainder of my life with honor, and I  
17 intend to do so.

18 Your Honor, I thank you for taking the time to  
19 listen to me.

20 THE COURT: All right. You may be seated.  
21 This will probably take a little while. I want to go  
22 through the factors that the Court has considered in  
23 writing a sentence.

24 MR. CALO: Your Honor, I didn't realize we were  
25 moving into this part. The president of the Foundation



## Proceedings - 3/6/12

1 would like to make a statement as part of the allocution  
2 if it's okay.

3 Thank you very much.

4 THE COURT: Would you introduce him?

5 MR. CALO: This is Mr. Navid Seyedali.

6 All right.

7 MR. SEYEDALI: Your Honor, my name is  
8 Navid Seyedali. I'm president and a board member of  
9 Child Foundation, a nonpolitical and nonreligious and  
10 nonprofit organization.

11 At the outset, I want the Court to know that we  
12 accept responsibility for the misconduct to which our  
13 former president pled guilty and fully accept to be  
14 penalized in some way.

15 I'm here to give the Court additional information to  
16 show that a minimal fine and no probation is a fair  
17 sentence for CF.

18 Your Honor, Dr. Mehrdad Yasrebi founded Child  
19 Foundation over 17 years ago, which, up to date, has  
20 successfully graduated over 500 young men and women from  
21 universities and over 11,000 teenagers from high school.

22 We considered this a worthwhile achievement and  
23 increasing these numbers is our goal.

24 We understand that mistakes have been made in the  
25 past. We have taken responsibility for that. As any

Proceedings - 3/6/12

1 responsible entity, we have made genuine effort and  
2 implemented processes to safeguard and circumvent future  
3 mistakes.

4 We detailed those processes in my briefing to this  
5 Court. We ask the Court to take the full view into  
6 account as it considers the fair and just sentence for  
7 this charity. Child Foundation has made genuine effort  
8 to identify and correct areas that have brought us here  
9 and designed and initiated processes of procedures that  
10 will protect us from experiencing what we've gone through  
11 for the past three years. Child Foundation has already  
12 suffered tremendously as a result of the conviction.  
13 We've lost some of our donors, we've lost the  
14 accreditations of rating agencies, financial institutions  
15 have closed the doors to us, and our morale has been  
16 hampered, but we're -- we're resolved to carry out our  
17 mission.

18 We respectfully request what this Court considers  
19 trusting the reputable members of the present board of  
20 directors to continue running this organization without  
21 hinderance of any probationary mechanism or any  
22 significant fine.

23 These individuals have done nothing to warrant  
24 mistrust and are worthy of being trusted.

25 A harsh sentence, Your Honor, with the burdens of

1 hefty fines and/or the terms of probation, will undermine  
2 our creditability within our donor base and,  
3 consequently, it will adversely affect our abilities to  
4 serve children who are underprivileged.

5 We respectfully submit that we do not see any added  
6 value in a position of any terms of probation. We  
7 believe probationary terms would be a waste of government  
8 resources and impose undue hinderance on our humanitarian  
9 work. Therefore, we respectfully request this Court  
10 consider allowing us to operate without probation.

11 We recognize that the Court must see that some  
12 punishment is necessary, but we respectfully request that  
13 the Court take into consideration the harm the Foundation  
14 has already suffered. For this reason we ask the Court  
15 to order a minimal fine. The fine will be a severe  
16 financial hardship, since the source of funds is publicly  
17 donated money, which would be better used supporting  
18 children in need.

19 At the end, Your Honor, please consider the fate of  
20 the 3,000 voiceless children that we support. And this -  
21 a harsh sentence for Dr. Yasrebi and the organization  
22 will have the same negative effect for the organization.

23 On behalf of Child Foundation, we appreciate the  
24 time you've provided to hear this statement.

25 Thank you.

Proceedings - 3/6/12

1 THE COURT: You're welcome.

2 You may take your seat.

3 MR. SEYEDALI: Thank you.

4 THE COURT: We heard a great deal about  
5 Child Foundation and the activities of Defendant Yasrebi.  
6 Probation has interviewed Defendant Yasrebi. Probation  
7 has received the information regarding this case. I'm  
8 going to quote from the presentence report prepared by  
9 probation regarding the activities generally of the Child  
10 Foundation.

11 They report, quote, the Child Foundation was  
12 established in 1994 by co-defendant Mehrdad Yasrebi. He  
13 served as CEO until his resignation in 2010. The Child  
14 Foundation was established to provide basic necessities  
15 to children living in poverty through sponsorships.  
16 Sponsors pay a minimum of \$20 per month. Children  
17 receive aid for their entire academic career and, for  
18 some, through their college years. Children may have  
19 more than one sponsor. The sponsor's donations provide  
20 relief to the children in the form of food, clothing,  
21 medical assistance, and educational needs, and, outside  
22 Iran, shelter and emergency funding.

23 The Child Foundation is currently providing aid to  
24 approximately 3,000 children worldwide.

25 In recent years, the Child Foundation conducted

1 fundraisers for earthquake victims in Haiti, Japan, and  
2 Turkey and has raised funds for Pakistan flood victims.

3 Outside of Iran, the Child Foundation collaborates  
4 with numerous universities to provide funds for  
5 economically disadvantaged students and also collaborates  
6 with Habitat for Humanity, the American Cancer Society,  
7 and Boys and Girls Aid Club.

8 Now, the background of Mr. Yasrebi is set forth at  
9 page 10 and 11 of the presentence report. I'll summarize  
10 that. He is 54, was born and raised in Iran. He entered  
11 the United States in 1976, at age 19, for education  
12 purposes. Since 1992, he's had permanent residence alien  
13 status. He obtained a master's degree from UCLA and a  
14 Ph.D in ceramic engineering from the University of  
15 Washington. From August of 1991 until September of 2011,  
16 he worked for Precision Castparts as an engineer working  
17 in research.

18 He has a wife and two children. The children are  
19 attending college. Both have plans to attend medical  
20 school. He's been described as a devoted husband and  
21 father. He took a major role in raising the children.  
22 He has been dedicated to his humanitarian activities.

23 With regard to the charge in the case, the original  
24 indictment was filed in October of 2005. It alleges that  
25 the Child Foundation was required to file a tax return

Proceedings - 3/6/12

1 identifying its substantial contributors and compensation  
2 information, but failed to do so. A superseding  
3 indictment was filed by the Government on February 2nd,  
4 2006, adding further failures to identify and alleging a  
5 violation of the Iranian transaction regulations in  
6 connection with an Italian company.

7 Those counts will be dismissed by reason of the  
8 charge in the superseding information which was filed in  
9 January of 2011. Just over a year ago. That charge  
10 alleges improper transfer of funds, in violation of the  
11 Iranian embargo. The charge is basically that cash  
12 transfers were made which were illegal under the embargo.

13 Defendant Yasrebi pled guilty in January of 2011,  
14 stating as follows -- and I read this statement, because  
15 it is a factor in some of the decisions that the Court  
16 has made. With respect to the charge to which I am  
17 pleading guilty, I represent that I did the following  
18 acts and that the following facts are true: From the  
19 middle of 2006 through early 2007, as president of the  
20 Child Foundation, I was aware that Child Foundation funds  
21 were being used to violate cash transfers to Iran for  
22 charitable purposes, but, nevertheless, in violation of  
23 an embargo ordered by President Clinton.

24 The term "in violation of an embargo" is the  
25 defendant's term that's used in the petition and in the

1 colloquy with the Court at the time of the guilty plea.

2 He says: It was within my power to stop those  
3 transfers, but I failed to do so. Furthermore, I did not  
4 disclose those transfers to the IRS, OFAC, or Child  
5 Foundation's auditors, and encouraged several individuals  
6 to refrain from volunteering any information suggesting  
7 the cash transfers had ever been made.

8 Now, at the same time Child Foundation pled guilty,  
9 acknowledging that Mr. Yasrebi was president of the  
10 Foundation, acknowledging that the facts to which he  
11 admitted to in his plea petition were done on behalf of  
12 Child Foundation, with the intent to benefit Child  
13 Foundation and for which Child Foundation is vicariously  
14 liable.

15 The Foundation admitted that Child Foundation funds  
16 were being used to facilitate cash transfers to Iran in  
17 violation of the embargo. The charge to which the  
18 defendants pled guilty is basically the defendants  
19 participated in a cover-up of the fact that cash  
20 transfers were made to entities in Iran in furtherance of  
21 their humanitarian activities, which they understood  
22 violated the embargo.

23 Now, the defendants argue that, in fact, the embargo  
24 does not prohibit the transfer of cash for humanitarian  
25 purposes. Both parties had submitted lengthy briefs on

1 the subject, and there have been, and still are,  
2 differing opinions on the subject.

3 For example, a letter written by Richard Newcomb,  
4 who was the director of the Office of Foreign Assets  
5 Control, to a lawyer inquiring for the -- for a company  
6 engaged in similar humanitarian activities in May 1997,  
7 advice that the Foundation could transfer donated cash  
8 funds to the Foundation in Iran for humanitarian  
9 purposes.

10 Mr. Newcomb testified in a later case in New York,  
11 at length, supporting this proposition. That's set forth  
12 in the transcript, I believe, of his testimony -- is set  
13 forth in Exhibit 11 of the declaration of David Angeli.

14 In the year 2000, Child Foundation's attorneys sent  
15 a letter to the Office of Foreign Asset Control raising  
16 the issue and asking for advice. They submitted roughly  
17 86 pages of background information, including a report of  
18 the Foundation's activities in Iran. The Government  
19 acknowledged receipt of the letter but did not respond to  
20 the questions posed by Child.

21 Instead, the correspondence was reassigned  
22 internally to the enforcement division for review and  
23 possible investigation.

24 Receiving no response, Child Foundation wrote again  
25 in August of 2001, posing the same questions and giving



Proceedings - 3/6/12

1 information. The Government records -- at least that's  
2 my understanding. The Government records indicate the  
3 letter was received, but the Government could not locate  
4 the letter within OFAC. Apparently -- and it's clear --  
5 the Government investigation continued from that point  
6 forward.

7 Now, both parties cite legal authority for their  
8 positions. The Court has looked at this. The issue is a  
9 close call, even considering the possibility of  
10 Mr. Yasrebi's good faith efforts to comply with the law,  
11 his potential reliance on professional advice, and the  
12 fact that at least some individuals within OFAC read the  
13 regulation differently. But there is sufficient support  
14 in the record where a conclusion that Yasrebi's  
15 activities regarding transfers were in violation of the  
16 embargo.

17 And I note in his plea, to the charge set forth in  
18 the plea petition, he states: I was aware that Child  
19 Foundation's funds were being used to facilitate cash  
20 transfers to Iran for charitable purposes, but,  
21 nevertheless, in violation of an embargo ordered by  
22 President Clinton.

23 The language there does indicate to the Court that,  
24 at the least, Mr. Yasrebi had the understanding that the  
25 embargo prohibited the use of cash transfers to Iran.

Proceedings - 3/6/12

1 Now, the Court finds that the cash transfers were  
2 made for humanitarian purposes. The cash transfers made  
3 in 2006 through early 2007 did violate the embargo in  
4 effect at that time. I believe that defendant is bound  
5 by his admission in the plea colloquy. My finding in  
6 this case is for the purposes of this case. I do find  
7 that the cash transfers at issue were prohibited by the  
8 embargo.

9 Now, the Court is required to find the advisory  
10 guideline applies to the case. Again, there's  
11 substantial dispute and extensive briefing on the  
12 guidelines to be applied. Each party has argued for a  
13 different offense level which has a substantial effect --  
14 the offense level has a substantial effect on the  
15 advisory guideline range. The parties read the same  
16 language but come to different conclusions. This is a  
17 substantial issue. This is an issue that the Court could  
18 go either way.

19 I note while the Government and probation argue for  
20 the highest possible offense level, both recommend the  
21 sentence below the resulting guideline range. The Court  
22 feels that the advisory guidelines argued by the  
23 Government are very high for this case and that there are  
24 many factors to consider in arriving at a just,  
25 reasonable, and necessary sentence; a sentence which I

1 will discuss.

2       However, the Court finds that the base offense level  
3 is 26 and the guideline 2M5.1(a)(1), which covers evasion  
4 of expert controls, the Court is going to adopt the  
5 guideline findings of probation and those argued by the  
6 Government.

7       As I say, I have some serious reservations about it,  
8 but I think, on balance, that guideline range is the  
9 guideline range that the Court will accept.

10       Now, based on the adoption of the offense level of  
11 26 and the probation recommendation on the guidelines, I  
12 find that the appropriate offense level, before  
13 adjustment, is 26, which results in an advisory guideline  
14 range of 46 to 57 months.

15       As I've indicated, there are many mitigating factors  
16 under § 3553, which I will consider in determining the  
17 sentence in this case.

18       Now, the Court is charged with imposing a sentence  
19 which is sufficient, but not greater than necessary, to  
20 comply with the purpose as set forth in 18 U.S.C. § 3553.  
21 Sentencing courts are to treat the guidelines only as one  
22 factor among the 3553(a) factors that are to be taken  
23 into account in arriving at the sentence.

24       As I've indicated, I have found that an advisory  
25 guideline range of 46 to 57 months is appropriate; but,

1 given the nature of the charge and the many mitigating  
2 factors, frankly, the guideline range is not particularly  
3 helpful in arriving at a just and reasonable sentence in  
4 this case.

5 Now, the Court has considered a number of factors.  
6 I'm going to go through these. Participating in or  
7 covering up activities that violate an embargo is a  
8 serious charge. While the record is clear that the  
9 activities and motivation on the part of defendants were  
10 fairness and humanitarian assistance to children,  
11 including Iranian children, the evidence is that  
12 defendants knew at some point in time, or believed, or  
13 supposed, that there was an issue as to whether cash  
14 transactions could be made without violating the embargo.

15 As I've indicated, I find that -- I've already found  
16 that cash transactions violate the embargo.

17 The record reflects that Defendant Yasrebi, rather  
18 than resolving the issue within the terms of the embargo,  
19 embarked on several methods of hiding and failing to  
20 disclose these cash transfers. This was, at the least,  
21 very poor judgment, and, in fact, constitutes and was a  
22 felony offense. He continued to seek methods of  
23 continuing to include cash transfers in support of the  
24 children even after he arrived at the understanding or  
25 belief that it was prohibited.

Proceedings - 3/6/12

1 Now, balanced against those facts are the following  
2 factors: Neither defendant has ever been involved in any  
3 criminal activity other than these charges relating to  
4 the transfer of cash to Iran to pursue their humanitarian  
5 project. Defendant Yasrebi's history indicates that he  
6 has many accomplishments. He's a good family man, a hard  
7 worker, and has been involved in humanitarian work for  
8 over 15 years. He has substantial support from the  
9 community.

10 Now, both defendants are not likely to reoffend.  
11 There's no question in the Court's mind about that.  
12 There is no substantive evidence of -- that defendants  
13 were in any way assisting the Government of Iran or any  
14 terrorist organization. There are activities and  
15 suppositions which the Government has reported, but the  
16 Court notes that after, roughly, over eight years of  
17 investigation, no substantive evidence was developed.  
18 Other than that, Mr. Yasrebi and Child Foundation were  
19 engaged in furnishing humanitarian assistance to children  
20 and were not supporting any regime or terrorist activity.

21 The Court finds there is nothing to support any such  
22 charge, and, in fact, no such charge has been formally  
23 made by the Government.

24 The defendant has been substantially punished at  
25 this point by reason of the charges and his conviction of

1 those charges. For a number of years this litigation has  
2 been a cloud over the heads of the defendant and his  
3 family. In addition, there have been large financial  
4 costs to him because of the charges and the defense.

5 He is a permanent resident alien, and his  
6 long-pending citizen application has recently been  
7 denied. Undoubtedly, this litigation was a factor. He  
8 will face immigration issues by reason of this  
9 conviction.

10 Now, his intentions were entirely charitable.  
11 There's no evidence, that the Court can see, of any  
12 specific harm to national security.

13 With regard to the request for a fine, Dr. Yasrebi  
14 is unemployed at the present time, has substantial family  
15 obligations, and is not wealthy. The Court intends to  
16 impose a fine, but it will be less than that recommended  
17 by the Government.

18 As I previously discussed, there are substantial  
19 issues both as to the offense level that's appropriate in  
20 this case, which substantially raises the advisory  
21 guidelines, and there are also legal issues regarding the  
22 Iranian transfer regulations which the Court has resolved  
23 in favor of the Government.

24 These are factors that the Court is also considering  
25 under 3553.

Proceedings - 3/6/12

1 Now, the defendant, as I've indicated, attempted to  
2 obtain information on this subject in 2000 and 2001, but  
3 the Government did not respond to them and, instead,  
4 opened an investigation file.

5 As counsel has argued, and it can be argued, that if  
6 the Government had responded on the merits of the  
7 question, we might not be here today. Dr. Yasrebi will  
8 have the stigma and the limitations that come with a  
9 felony conviction.

10 I note that there is substantial disparity between  
11 the sentences imposed for this type of conduct and the  
12 sentence requested by the Government. At page 21 and 22  
13 of the Child Foundation reply memorandum, there are a  
14 number of cases listed by the defendant. These are cases  
15 involving the same type of conduct. They may not be  
16 exactly the same, but the same type of conduct. In all  
17 but one case the defendant was given a noncustodial  
18 sentence, often with the consent of the Government.

19 I would note specifically the case of *USA v. Groos*.  
20 That's discussed at page 22 of the Child's reply  
21 memorandum. In that case, the defendant was sentenced  
22 based upon his attempt to distribute fire suppression  
23 equipment to Iran without a license. The company was not  
24 charged criminally and the individual defendant's  
25 guideline range was 24 to 30 months. The Court departed

Proceedings - 3/6/12

1 downward to 60 days imprisonment. And, in pronouncing  
2 the sentence, the district court judge noted the  
3 amendment history of § 2M1.5 lends evidence to the  
4 defendant's argument that the harshest punishment should  
5 be reserved for cases where weapons or military  
6 technologies are at issue and where the threat to  
7 national security is apparent.

8 As I indicate, the defendant has cited cases on the  
9 issue of disparity, which indicate there is a disparity  
10 between the request of the Government and sentences in  
11 this type of case.

12 The probation department in the presentence report  
13 states, quote, The threat to national security was less  
14 than average. In fact, the Court feels it was basically  
15 nonexistent.

16 With regard to the request for a fine against  
17 Child's, consideration should be given to the fact that  
18 the source of the funds, which are mostly donations  
19 received from innocent donors, reducing the funds would  
20 adversely affect the children for whom the funds were  
21 raised.

22 Motive is a major factor in these cases, and in this  
23 case the motive was solely humanitarianism --  
24 humanitarianism. There's lack of financial consideration  
25 to the defendants. The entry of a guilty plea will save



1 a tremendous amount of money in prosecuting this case.  
2 Defendant's conduct caused little, if any, harm to U.S.  
3 sanctions. We're not really aware of any harm to the  
4 sanctions, other the fact that there is a violation here  
5 as discussed. It has conferred no benefit, in the  
6 Court's view, on the government of Iran.

7 The overriding fact is that the Government  
8 investigated and surveyed and obtained warrants to search  
9 his facilities and looked at computers for about ten  
10 years and found no evidence that he's in any way  
11 supporting terrorist activities or is a supporter of the  
12 Iran regime.

13 In fact, the evidence is to the contrary. It seems,  
14 to the Court, with the extensive investigation made by  
15 the Government, if there was something there, it would  
16 have been found and it would have been in this record and  
17 in the record at this point.

18 Now, I will note that regarding the Child Foundation  
19 they've completely revamped their operation, they've met  
20 all of the conditions required by the Government as part  
21 of the plea agreement. The list was substantial. They  
22 have a negative net worth, according to the presentence  
23 of this report. They undoubtedly lost donations as a  
24 result.

25 I mention that he has support in the community.

Proceedings - 3/6/12

1 There were numerous letters from the Iranian children who  
2 were part of the program over the years.

3 Pretrial Services reports that he has met all of the  
4 conditions of release.

5 On the record before this Court, there's no evidence  
6 that defendant committed this crime through any violent  
7 or threatening behavior. There's no evidence that  
8 defendant's conduct facilitated or encouraged any  
9 violence in Iran. The Government's evidence does not  
10 support any conclusion that defendant's conduct posed a  
11 national security threat to the United States, nor is  
12 there evidence suggesting that any such threat, in fact,  
13 was created.

14 After reviewing all of the material and hearing the  
15 arguments, it's the Court's feeling that while this is a  
16 serious crime, after reviewing all of the factors, which  
17 I am required to consider under § 3553, the positive  
18 factors in favor of the defendants outweighed the  
19 negative aspects of the case.

20 With regard to the Child Foundation, would you  
21 stand, please, Mr. Calo.

22 Would you like to present any further information at  
23 this time before the Court passes sentence?

24 MR. CALO: No, Your Honor. We'll submit it.

25 THE COURT: Okay. Well, I've considered the

1 advisory sentencing guideline range. I've considered all  
2 the factors that I've set forth here. I'm going to  
3 impose sentence of what I feel reflects the seriousness  
4 of the offense, that will provide just punishment for the  
5 offense, that will afford adequate deterrence to criminal  
6 conduct. It will be the judgment of the Court that the  
7 defendant, Child Foundation, pay a fine in the amount of  
8 \$50,000, due immediately in full. Interest will be  
9 waived.

10 Now, if the defendant has not paid that fine within  
11 a reasonable period of time, they shall commence payments  
12 of not less than \$2,000 per month.

13 Now, the defendant argues against probation. I  
14 don't know that they need probation, but there are a  
15 number of conditions they have to fulfill. I'm going to  
16 place the defendant on probation for a period of two  
17 years or until the fine has been paid, but no less than  
18 two years. I feel that the probation is appropriate in  
19 this case because of the numerous conditions of  
20 supervision that have -- well, numerous conditions that  
21 have been made a part of the plea agreement. During the  
22 period of probation, the probation officer can make  
23 certain that these conditions are being obeyed.

24 The Court does receive requests to terminate  
25 probation when there's no -- showing that there's no need

1 for probation.

2 That will be the judgment of the Court. The period  
3 of probation is two years. They'll pay the fine of  
4 \$50,000 during that time.

5 All transactions conducted with Iran by the  
6 Foundation shall receive approval from the Department of  
7 Treasury, Office of Foreign Assets Control.

8 Now, there's to be notice to the donors and  
9 contributors for the past five years in writing of the  
10 behavior in a form to be approved by the Government. The  
11 Government and the defendant have not been able to agree  
12 on the form. It's been submitted to the Court. I'll  
13 furnish you with a formal notice when I've completed this  
14 sentence.

15 Now, the further condition is that the defendant  
16 develop and submit a compliance program to be approved by  
17 the Government and the probation office. They shall  
18 authorize release of the probation office of any and all  
19 financial information by execution and release of the  
20 financial information form.

21 Prior to sentencing, the defendant agrees to  
22 terminate the employment of its current office manager.

23 Have these conditions all been met, Mr. Gorder?

24 MR. GORDER: It's my understanding they have,  
25 Your Honor, with the exception of the donor letter.

Proceedings - 3/6/12

1 THE COURT: Okay. All right. Prior to --  
2 excuse me, the defendant shall pay a fee assessment in  
3 the amount of \$400, due immediately in full.

4 Is there a waiver of appeal rights as part of the  
5 agreement?

6 MR. GORDER: Yes, Your Honor.

7 THE COURT: Okay. You have waived some or all  
8 of your appeal rights as part of the plea agreement.  
9 These waivers are generally enforceable. If you believe  
10 the plea agreement allows you to appeal, you must file an  
11 appeal within 14 days of the entry of judgment. If you  
12 are unable to pay the cost of an appeal, you may apply  
13 for leave to appeal in forma pauperis. And if you  
14 request, the clerk of the court will prepare and file a  
15 notice of appeal on your behalf.

16 Do you have charges to dismiss, Mr. Gorder?

17 MR. GORDER: Yes, Your Honor. We move to  
18 dismiss the underlying indictment and superseding  
19 indictment.

20 THE COURT: There's two underlying indictments.  
21 The one in 2005 and the one in 2006, they both will be  
22 dismissed?

23 MR. GORDER: That's correct.

24 THE COURT: All right. Any questions, Counsel,  
25 about the judgment?

## Proceedings - 3/6/12

1 MR. CALO: No, Your Honor.

2 THE COURT: Any questions from the Government  
3 with regard to the Child Foundation?

4 MR. GORDER: No, Your Honor.

5 MR. ATKINSON: No, sir.

6 THE COURT: All right. That completes the  
7 sentencing process for Child Foundation.

8 Mr. Yasrebi, would you stand, please.

9 All right. I've considered all the factors that  
10 I've discussed with you, the advisory sentencing  
11 guideline range, the factors required under 3553, and  
12 I've selected a sentence that I believe appropriately  
13 addresses the nature and circumstances of the offense,  
14 the history and characteristics of this defendant, that  
15 will reflect, also, the seriousness of the offense and  
16 promote respect for the law and provide just punishment.

17 It will be the judgment of the Court that the  
18 defendant shall pay a fine in the amount of \$50,000, due  
19 immediately in full. Interest will be waived.

20 The defendant shall be placed on probation for a  
21 period of five years, subject to the standard conditions  
22 of supervision adopted by this Court and the following  
23 special conditions: He shall cooperate in the collection  
24 of DNA, as directed by the probation officer, if required  
25 by law. His employment shall be subject to approval by

Proceedings - 3/6/12

1 the probation officer. The defendant shall authorize  
2 release to the probation officer of any and all financial  
3 information by execution of a release of financial  
4 information form or by any other appropriate means as  
5 directed by the probation officer.

6 He shall pay this fine in the amount of \$50,000. If  
7 there's any unpaid balance or inability to pay the full  
8 balance, it shall be paid at the maximum installment  
9 possible, and not less than \$1,500 per month.

10 I believe this is an appropriate case for a  
11 noncustodial sentence for an alternative sentence to a  
12 prison sentence. Accordingly, I'll require that he  
13 adhere to a home detention schedule, as prescribed by the  
14 probation officer, for a period of 12 months, which may  
15 include radio frequency, global positioning surveillance,  
16 or other means of location monitoring as directed by the  
17 probation officer.

18 The defendant's employer or other third parties may  
19 be contacted, at the probation officer's discretion, to  
20 confirm the defendant's compliance with the home  
21 detention program. He shall pay all or part of the cost  
22 of home detention, as determined by the probation  
23 officer, and may be held responsible for any damage to  
24 the monitoring equipment.

25 The drug testing condition is suspended based on the

Proceedings - 3/6/12

1 Court's determination that the defendant poses a low risk  
2 of future substance abuse. He shall pay a fee assessment  
3 in the amount of \$100. That's due immediately.

4 Now, you have waived some or all of your appeal  
5 rights as part of the appeal agreement. These waivers  
6 are generally enforceable. If you believe the plea  
7 agreement allows you to appeal, you must file a notice of  
8 appeal within 14 days of the entry of judgment. If you  
9 can't pay the cost of an appeal, you may apply to appeal  
10 in forma pauperis.

11 If you so request, the clerk of the court will  
12 prepare it and file a notice of appeal on your behalf.

13 Now, are there pending charges -- I guess there are,  
14 as well, Mr. Gorder, as to Mr. Yasrebi?

15 MR. GORDER: Yes, Your Honor. The same two  
16 indictments should be dismissed.

17 THE COURT: Any issues regarding the form of  
18 judgment that we need to discuss?

19 MR. GORDER: No, Your Honor.

20 THE COURT: Do you have any issues regarding  
21 the form of judgment, Mr. Angeli?

22 MR. ANGELI: No, Your Honor.

23 THE COURT: We're going to have a long period  
24 of home confinement here. I talked to the probation  
25 officer. I've conveyed to him the fact that this will



## Proceedings - 3/6/12

1 allow Mr. Yasrebi to be -- the home confinement  
2 conditions will allow him to work and go to places  
3 approved by the probation officer. I believe that that  
4 alternative to imprisonment is very appropriate and very  
5 fair and reasonable in this case.

6 Anything further we need to discuss?

7 MR. ANGELI: Nothing from us, Your Honor.

8 MR. GORDER: No, Your Honor. Thank you.

9 THE COURT: Good luck to everyone connected  
10 with the case. Thank you.

11 MR. ANGELI: Thank you, Judge.

12 THE CLERK: Court is adjourned.

13 (Hearing concluded .)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## Proceedings - 3/6/12

## C E R T I F I C A T E

I certify, by signing below, that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Erwin

\_\_\_\_\_  
Jill L. Erwin  
Official Court Reporter

Date: March 14, 2012